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RECORDS OF THE UNITED STATES

NUERNBERG WAR CRIMES TRIALS

UNITED STATES OF AMERICA v. CARL KRAUCH ET AL. (CASE VI)

AUGUST 14, 1947-JULY 30, 1948

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Defense Briefs, Gajewski-Mann
(English)



THE NATIONAL ARCHIVES
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INTRODUCTION

On the 113 rolls of this microfilm publication are reproduced the records of Case VI, *United States of America v. Carl Krauch et al.* (I. G. Farben Case), 1 of the 12 trials of war criminals conducted by the U.S. Government from 1946 to 1949 at Nuernberg subsequent to the International Military Tribunal (IMT) held in the same city. These records consist of German- and English-language versions of official transcripts of court proceedings, prosecution and defense briefs and statements, and defendants' final pleas as well as prosecution and defense exhibits and document books in one language or the other. Also included are minute books, the official court file, order and judgment books, clemency petitions, and finding aids to the documents.

The transcripts of this trial, assembled in 2 sets of 43 bound volumes (1 set in German and 1 in English), are the recorded daily trial proceedings. Prosecution statements and briefs are also in both languages but unbound, as are the final pleas of the defendants delivered by counsel or defendants and submitted by the attorneys to the court. Unbound prosecution exhibits, numbered 1-2270 and 2300-2354, are essentially those documents from various Nuernberg record series, particularly the NI (Nuernberg Industrialist) Series, and other sources offered in evidence by the prosecution in this case. Defense exhibits, also unbound, are predominantly affidavits by various persons. They are arranged by name of defendant and thereunder numerically, along with two groups of exhibits submitted in the general interest of all defendants. Both prosecution and defense document books consist of full or partial translations of exhibits into English. Loosely bound in folders, they provide an indication of the order in which the exhibits were presented before the tribunal.

Minute books, in two bound volumes, summarize the transcripts. The official court file, in nine bound volumes, includes the progress docket, the indictment, and amended indictment and the service thereof; applications for and appointments of defense counsel and defense witnesses and prosecution comments thereto; defendants' application for documents; motions and reports; uniform rules of procedures; and appendixes. The order and judgment books, in two bound volumes, represent the signed orders, judgments, and opinions of the tribunal as well as sentences and commitment papers. Defendants' clemency petitions, in three bound volumes, were directed to the military governor, the Judge Advocate General, and the U.S. District Court for the District of Columbia. The finding aids summarize transcripts, exhibits, and the official court file.

Case VI was heard by U.S. Military Tribunal VI from August 14, 1947, to July 30, 1948. Along with records of other Nuernberg

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and Far East war crimes trials, the records of this case are part of the National Archives Collection of World War II War Crimes Records, Record Group 238.

The I. G. Farben Case was 1 of 12 separate proceedings held before several U.S. Military Tribunals at Nuernberg in the U.S. Zone of Occupation in Germany against officials or citizens of the Third Reich, as follows:

Case No.	<i>United States v.</i>	Popular Name	No. of Defendants
1	<i>Karl Brandt et al.</i>	Medical Case	23
2	<i>Erhard Milch</i>	Milch Case (Luftwaffe)	1
3	<i>Josef Altstoetter et al.</i>	Justice Case	16
4	<i>Oswald Pohl et al.</i>	Pohl Case (SS)	18
5	<i>Friedrich Flick et al.</i>	Flick Case (Industrialist)	6
6	<i>Carl Krauch et al.</i>	I. G. Farben Case (Industrialist)	24
7	<i>Wilhelm List et al.</i>	Hostage Case	12
8	<i>Ulrich Greifelt et al.</i>	RuSHA Case (SS)	14
9	<i>Otto Ohlendorf et al.</i>	Einsatzgruppen Case (SS)	24
10	<i>Alfried Krupp et al.</i>	Krupp Case (Industrialist)	12
11	<i>Ernst von Weizaecker et al.</i>	Ministries Case	21
12	<i>Wilhelm von Lueb et al.</i>	High Command Case	14

Authority for the proceedings of the IMT against the major Nazi war criminals derived from the Declaration on German Atrocities (Moscow Declaration) released November 1, 1943; Executive Order 9547 of May 2, 1945; the London Agreement of August 8, 1945; the Berlin Protocol of October 6, 1945; and the IMT Charter.

Authority for the 12 subsequent cases stemmed mainly from Control Council Law 10 of December 20, 1945, and was reinforced by Executive Order 9679 of January 16, 1946; U.S. Military Government Ordinances 7 and 11 of October 18, 1946, and February 17, 1947, respectively; and U.S. Forces, European Theater General Order 301 of October 24, 1946. Procedures applied by U.S. Military Tribunals in the subsequent proceedings were patterned after those of the IMT and further developed in the 12 cases, which required over 1,200 days of court sessions and generated more than 330,000 transcript pages.

Formation of the I. G. Farben Combine was a stage in the evolution of the German chemical industry, which for many years led the world in the development, production, and marketing of organic dyestuffs, pharmaceuticals, and synthetic chemicals. To control the excesses of competition, six of the largest chemical firms, including the Badische Anilin & Soda Fabrik, combined to form the Interessengemeinschaft (Combine of Interests, or Trust) of the German Dyestuffs Industry in 1904 and agreed to pool technological and financial resources and markets. The two remaining chemical firms of note entered the combine in 1916. In 1925 the Badische Anilin & Soda Fabrik, largest of the firms and already the majority shareholder in two of the other seven companies, led in reorganizing the industry to meet the changed circumstances of competition in the post-World War markets by changing its name to the I. G. Farbenindustrie Aktiengesellschaft, moving its home office from Ludwigshafen to Frankfurt, and merging with the remaining five firms.

Farben maintained its influence over both the domestic and foreign markets for chemical products. In the first instance the German explosives industry, dependent on Farben for synthetically produced nitrates, soon became subsidiaries of Farben. Of particular interest to the prosecution in this case were the various agreements Farben made with American companies for the exchange of information and patents and the licensing of chemical discoveries for foreign production. Among the trading companies organized to facilitate these agreements was the General Anilin and Film Corp., which specialized in photographic processes. The prosecution charged that Farben used these connections to retard the "Arsenal of Democracy" by passing on information received to the German Government and providing nothing in return, contrary to the spirit and letter of the agreements.

Farben was governed by an Aufsichtsrat (Supervisory Board of Directors) and a Vorstand (Managing Board of Directors). The Aufsichtsrat, responsible for the general direction of the firm, was chaired by defendant Krauch from 1940. The Vorstand actually controlled the day-to-day business and operations of Farben. Defendant Schmitz became chairman of the Vorstand in 1935, and 18 of the other 22 original defendants were members of the Vorstand and its component committees.

Transcripts of the I. G. Farben Case include the indictment of the following 24 persons:

Otto Ambros: Member of the Vorstand of Farben; Chief of Chemical Warfare Committee of the Ministry of Armaments and War Production; production chief for Buna and poison gas; manager of Auschwitz, Schkopau, Ludwigshafen, Oppau, Gendorf, Dyhernfurth, and Falkenhagen plants; and Wehrwirtschaftsfuehrer.

Max Brueggemann: Member and Secretary of the Vorstand of Farben; member of the legal committee; Deputy Plant Leader of the Leverkusen Plant; Deputy Chief of the Sales Combine for Pharmaceuticals; and director of the legal, patent, and personnel departments of the Works-Combine, Lower Rhine.

Ernst Buerger: Member of the Vorstand of Farben; Chief of Works Combine, Central Germany; Plant Leader at the Bitterfeld and Wolfen-Farben plants; and production chief for light metals, dyestuffs, organic intermediates, plastics, and nitrogen at these plants.

Heinrich Bueteftisch: Member of the Vorstand of Farben; manager of Leuna plants; production chief for gasoline, methanol, and chlorine electrolysis production at Auschwitz and Moosbierbaum; Wehrwirtschaftsfuehrer; member of the Himmler Freundeskreis (circle of friends of Himmler); and SS Obersturmbannfuehrer (Lieutenant Colonel).

Walter Duerrfeld: Director and construction manager of the Auschwitz plant of Farben, director and construction manager of the Monowitz Concentration Camp, and Chief Engineer at the Leuna plant.

Fritz Gajewski: Member of the Central Committee of the Vorstand of Farben, Chief of Sparte III (Division III) in charge of production of photographic materials and artificial fibers, manager of "Agfa" plants, and Wehrwirtschaftsfuehrer.

Heinrich Gattineau: Chief of the Political-Economic Policy Department, "WIPO," of Farben's Berlin N.W. 7 office; member of Southeast Europe Committee; and director of A.G. Dynamit Nobel, Pressburg, Czechoslovakia.

Paul Haeffliger: Member of the Vorstand of Farben; member of the Commercial Committee; and Chief, Metals Departments, Sales Combine for Chemicals.

Erich von der Heyde: Member of the Political-Economic Policy Department of Farben's Berlin N.W. 7 office, Deputy to the Chief of Intelligence Agents, SS Hauptsturmfuehrer, and member of the WI-RUE-AMT (Military Economics and Armaments Office) of the Oberkommando der Wehrmacht (OKW) (High Command of the Armed Forces).

Heinrich Hoerlein: Member of the Central Committee of the Vorstand of Farben; chief of chemical research and development of vaccines, sera, pharmaceuticals, and poison gas; and manager of the Elberfeld Plant.

Max Ilgner: Member of the Vorstand of Farben; Chief of Farben's Berlin N.W. 7 office directing intelligence, espionage, and propaganda activities; member of the Commercial Committee; and Wehrwirtschaftsfuehrer.

Friedrich Jaehne: Member of the Vorstand of Farben; chief engineer in charge of construction and physical plant development; Chairman of the Engineering Committee; and Deputy Chief, Works Combine, Main Valley.

August von Knieriem: Member of the Central Committee of the Vorstand of Farben; Chief Counsel of Farben; and Chairman, Legal and Patent Committees.

Carl Krauch: Chairman of the Aufsichtsrat of Farben and Generalbevollmaechtigter fuer Sonderfragen der Chemischen Erzeugung (General Plenipotentiary for Special Questions of Chemical Production) on Goering's staff in the Office of the 4-Year Plan.

Hans Kuehne: Member of the Vorstand of Farben; Chief of the Works Combine, Lower Rhine; Plant Leader at Leverkusen, Elberfeld, Uerdingen, and Dormagen plants; production chief for inorganics, organic intermediates, dyestuffs, and pharmaceuticals at these plants; and Chief of the Inorganics Committee.

Hans Kugler: Member of the Commercial Committee of Farben; Chief of the Sales Department Dyestuffs for Hungary, Rumania, Yugoslavia, Greece, Bulgaria, Turkey, Czechoslovakia, and Austria; and Public Commissar for the Falkenau and Aussig plants in Czechoslovakia.

Carl Lautenschlaeger: Member of the Vorstand of Farben; Chief of Works Combine, Main Valley; Plant Leader at the Hoechst, Griesheim, Mainkur, Gersthofen, Offenbach, Eystrup, Marburg, and Neuhausen plants; and production chief for nitrogen, inorganics, organic intermediates, solvents and plastics, dyestuffs, and pharmaceuticals at these plants.

Wilhelm Mann: Member of the Vorstand of Farben, member of the Commercial Committee, Chief of the Sales Combine for Pharmaceuticals, and member of the SA.

Fritz ter Meer: Member of the Central Committee of the Vorstand of Farben; Chief of the Technical Committee of the Vorstand that planned and directed all of Farben's production; Chief of Sparte II in charge of production of Buna, poison gas, dyestuffs, chemicals, metals, and pharmaceuticals; and Wehrwirtschaftsfuehrer.

Heinrich Oster: Member of the Vorstand of Farben, member of the Commercial Committee, and manager of the Nitrogen Syndicate.

Hermann Schmitz: Chairman of the Vorstand of Farben, member of the Reichstag, and Director of the Bank of International Settlements.

Christian Schneider: Member of the Central Committee of the Vorstand of Farben; Chief of Sparte I in charge of production of nitrogen, gasoline, diesel and lubricating oils, methanol, and organic chemicals; Chief of Central Personnel Department, directing the treatment of labor at Farben plants; Wehrwirtschaftsfuehrer; Hauptabwehrbeauftragter (Chief of Intelligence Agents); Hauptbetriebsfuehrer (Chief of Plant Leaders); and supporting member of the Schutzstaffeln (SS) of the NSDAP.

Georg von Schnitzler: Member of the Central Committee of the Vorstand of Farben, Chief of the Commercial Committee of the Vorstand that planned and directed Farben's domestic and foreign sales and commercial activities, Wehrwirtschaftsfuehrer (Military Economy Leader), and Hauptsturmfaehrer (Captain) in the Sturmabteilungen (SA) of the Nazi Party (NSDAP).

Carl Wurster: Member of the Vorstand of Farben; Chief of the Works Combine, Upper Rhine; Plant Leader at Ludwigs-hafen and Oppau plants; production chief for inorganic chemicals; and Wehrwirtschaftsfuehrer.

The prosecution charged these 24 individual staff members of the firm with various crimes, including the planning of aggressive war through an alliance with the Nazi Party and synchronization of Farben's activities with the military planning of the German High Command by participation in the preparation of the 4-Year Plan, directing German economic mobilization for war, and aiding in equipping the Nazi military machines.¹ The defendants also were charged with carrying out espionage and intelligence activities in foreign countries and profiting from these activities. They participated in plunder and spoliation of Austria, Czechoslovakia, Poland, Norway, France, and the Soviet Union as part of a systematic economic exploitation of these countries. The prosecution also charged mass murder and the enslavement of many thousands of persons particularly in Farben plants at the Auschwitz and Monowitz concentration camps and the use of poison gas manufactured by the firm in the extermination

¹The trial of defendant Brueggemann was discontinued early during the proceedings because he was unable to stand trial on account of ill health.

of millions of men, women, and children. Medical experiments were conducted by Farben on enslaved persons without their consent to test the effects of deadly gases, vaccines, and related products. The defendants were charged, furthermore, with a common plan and conspiracy to commit crimes against the peace, war crimes, and crimes against humanity. Three defendants were accused of membership in a criminal organization, the SS. All of these charges were set forth in an indictment consisting of five counts.

The defense objected to the charges by claiming that regulations were so stringent and far reaching in Nazi Germany that private individuals had to cooperate or face punishment, including death. The defense claimed further that many of the individual documents produced by the prosecution were originally intended as "window dressing" or "howling with the wolves" in order to avoid such punishment.

The tribunal agreed with the defense in its judgment that none of the defendants were guilty of Count I, planning, preparation, initiation, and waging wars of aggression; or Count V, common plans and conspiracy to commit crimes against the peace and humanity and war crimes.

The tribunal also dismissed particulars of Count II concerning plunder and exploitation against Austria and Czechoslovakia. Eight defendants (Schmitz, von Schnitzler, ter Meer, Buergin, Haeffliger, Ilgner, Oster, and Kugler) were found guilty on the remainder of Count II, while 15 were acquitted. On Count III (slavery and mass murder), Ambros, Bueteftisch, Duerrfeld, Krauch, and ter Meer were judged guilty. Schneider, Bueteftisch, and von der Heyde also were charged with Count IV, membership in a criminal organization, but were acquitted.

The tribunal acquitted Gajewski, Gattineau, von der Heyde, Hoerlein, von Knieriem, Kuehne, Lautenschlaeger, Mann, Schneider, and Wurster. The remaining 13 defendants were given prison terms as follows:

<u>Name</u>	<u>Length of Prison Term (years)</u>
Ambros	8
Buergin	2
Bueteftisch	6
Duerrfeld	8
Haeffliger	2
Ilgner	3
Jaehne	1 1/2
Krauch	6
Kugler	1 1/2
Oster	2
Schmitz	4
von Schnitzler	5
ter Meer	7

All defendants were credited with time already spent in custody.

In addition to the indictments, judgments, and sentences, the transcripts also contain the arraignment and plea of each defendant (all pleaded not guilty) and opening statements of both defense and prosecution.

The English-language transcript volumes are arranged numerically, 1-43, and the pagination is continuous, 1-15834 (page 4710 is followed by pages 4710(1)-4710(285)). The German-language transcript volumes are numbered 1a-43a and paginated 1-16224 (14a and 15a are in one volume). The letters at the top of each page indicate morning, afternoon, or evening sessions. The letter "C" designates commission hearings (to save court time and to avoid assembling hundreds of witnesses at Nuernberg, in most of the cases one or more commissions took testimony and received documentary evidence for consideration by the tribunals). Two commission hearings are included in the transcripts: that for February 7, 1948, is on pages 6957-6979 of volume 20 in the English-language transcript, while that for May 7, 1948, is on pages 14775a-14776 of volume 40a in the German-language transcript. In addition, the prosecution made one motion of its own and, with the defense, six joint motions to correct the English-language transcripts. Lists of the types of errors, their location, and the prescribed corrections are in several volumes of the transcripts as follows:

- First Motion of the Prosecution, volume 1
- First Joint Motion, volume 3
- Second Joint Motion, volume 14
- Third Joint Motion, volume 24
- Fourth Joint Motion, volume 29
- Fifth Joint Motion, volume 34
- Sixth Joint Motion, volume 40

The prosecution offered 2,325 prosecution exhibits numbered 1-2270 and 2300-2354. Missing numbers were not assigned due to the difficulties of introducing exhibits before the commission and the tribunal simultaneously. Exhibits 1835-1838 were loaned to an agency of the Department of Justice for use in a separate matter, and apparently No. 1835 was never returned. Exhibits drew on a variety of sources, such as reports and directives as well as affidavits and interrogations of various individuals. Maps and photographs depicting events and places mentioned in the exhibits are among the prosecution resources, as are publications, correspondence, and many other types of records.

The first item in the arrangement of prosecution exhibits is usually a certificate giving the document number, a short description of the exhibits, and a statement on the location of the original document or copy of the exhibit. The certificate is followed by the actual prosecution exhibit (most are photostats,

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but a few are mimeographed articles with an occasional carbon of the original). The few original documents are often affidavits of witnesses or defendants, but also ledgers and correspondence, such as:

<u>Exhibit No.</u>	<u>Doc. No.</u>	<u>Exhibit No.</u>	<u>Doc. No.</u>
322	NI 5140	1558	NI 11411
918	NI 6647	1691	NI 12511
1294	NI 14434	1833	NI 12789
1422	NI 11086	1886	NI 14228
1480	NI 11092	2313	NI 13566
1811	NI 11144		

In rare cases an exhibit is followed by a translation; in others there is no certificate. Several of the exhibits are of poor legibility and a few pages are illegible.

Other than affidavits, the defense exhibits consist of newspaper clippings, reports, personnel records, Reichgesetzblatt excerpts, photographs, and other items. The 4,257 exhibits for the 23 defendants are arranged by name of defendant and thereunder by exhibit number. Individual exhibits are preceded by a certificate wherever available. Two sets of exhibits for all the defendants are included.

Translations in each of the prosecution document books are preceded by an index listing document numbers, biased descriptions, and page numbers of each translation. These indexes often indicate the order in which the prosecution exhibits were presented in court. Defense document books are similarly arranged. Each book is preceded by an index giving document number, description, and page number for every exhibit. Corresponding exhibit numbers generally are not provided. There are several unindexed supplements to numbered document books. Defense statements, briefs, pleas, and prosecution briefs are arranged alphabetically by defendant's surname. Pagination is consecutive, yet there are many pages where an "a" or "b" is added to the numeral.

At the beginning of roll 1 key documents are filmed from which Tribunal VI derived its jurisdiction: the Moscow Declaration, U.S. Executive Orders 9547 and 9679, the London Agreement, the Berlin Protocol, the IMT Charter, Control Council Law 10, U.S. Military Government Ordinances 7 and 11, and U.S. Forces, European Theater General Order 301. Following these documents of authorization is a list of the names and functions of members of the tribunal and counsels. These are followed by the transcript covers giving such information as name and number of case, volume numbers, language, page numbers, and inclusive dates. They are followed by the minute book, consisting of summaries of the daily proceedings, thus providing an additional finding aid for the transcripts. Exhibits are listed in an index that notes the

type, number, and name of exhibit; corresponding document book, number, and page; a short description of the exhibit; and the date when it was offered in court. The official court file is summarized by the progress docket, which is preceded by a list of witnesses.

Not filmed were records duplicated elsewhere in this microfilm publication, such as prosecution and defense document books in the German language that are largely duplications of the English-language document books.

The records of the I. G. Farben Case are closely related to other microfilmed records in Record Group 238, specifically prosecution exhibits submitted to the IMT, T988; NI (Nuernberg Industrialist) Series, T301; NM (Nuernberg Miscellaneous) Series, M-936; NOKW (Nuernberg Armed Forces High Command) Series, T1119; NG (Nuernberg Government) Series, T1139; NP (Nuernberg Propaganda) Series, M942; WA (undetermined) Series, M946; and records of the Brandt case, M887; the Milch Case, M888; the Altstoetter case, M889; the Pohl Case, M890; the Flick Case, M891; the List case, M893; the Greifelt case, M894; and the Ohlendorf case, M895. In addition, the record of the IMT at Nuernberg has been published in the 42-volume *Trial of the Major War Criminals Before the International Military Tribunal* (Nuernberg, 1947). Excerpts from the subsequent proceedings have been published in 15 volumes as *Trials of War Criminals Before the Nuernberg Military Tribunal Under Control Council Law No. 10* (Washington). The Audiovisual Archives Division of the National Archives and Records Service has custody of motion pictures and photographs of all 13 trials and sound recordings of the IMT proceedings.

Martin K. Williams arranged the records and, in collaboration with John Mendelsohn, wrote this introduction.

Leslie Brief, Graysville (Baltimore)

Case to
Defense

MILITARY TRIBUNAL NO. VI

CASE No. 6

CLOSING BRIEF

for

Dr. Fritz G. J. ISLER

Submitted by his Defense Counsel
Dr. W. von Metzler
Carl Meyer

Nuremberg, 2 June 1948.

ring



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Introduction.

1) In the following brief the evidence produced in the case of the defendant Dr. Fritz Gajewski will be evaluated. This evaluation will be limited to those facts and circumstances which directly concern the defendant or with which he is obviously connected. So far as the facts on which the indictment is based concern other defendants who were directly connected with these facts, we shall not deal with them and refer to the statements of the Defense Counsel for these defendants on the points in question. The contents of this brief are the logical result of the position of the defendant within the I.G., which position will be hereinafter described and defined. This fundamental limitation of our brief will, in our opinion, comply best with the request of the Court for the utmost condensation and elimination of unnecessary repetitions.

2) As to the curriculum vitae of the defendant and particularly his career within the I.G., as well as the positions he held there from 1933 onwards, reference is made to the affidavit of the defendant and to his testimony.

Exh. 290, NI-6429, Document Book 11, English page 37, German page 39

Transcript, English pages 8176/77, German pages 8247/48

Closing Brief Gajowski

May it merely be once again pointed out that the defendant was the second of the twelve children of a school teacher and that he was therefore able to carry out his training as a chemist only under the greatest difficulties and by means of additional work outside of his studies, and that he owes his success in his vocation solely to his work and knowledge.

3) So far as the position of the defendant inside the I.G. is concerned, he was, as can be seen from the aforementioned Exh. 290, in 1933 a member of the Vorstand and of the Control Committee of the I.G.; furthermore, he was the head of Werke III of the I.G. (manufacture of photographic articles, rayon, spun rayon and purely synthetic fibres as well as of cellulose) and a member and deputy chairman of the Technical Committee. In particular, he was the works manager of the Wolfen Film Factory, which was the largest plant of Werke III, employing 11,000 to 12,000 workers. The defendant held this position until 14 June 1945.

(See also Gajowski's testimony,

Transcript, English page 8175, German page 8246.)

The defendant's energy was completely taken up with his work as head of Werke III, which included six more plants, and as works manager of the large Wolfen Film Factory,

(See Gajowski's testimony,

Transcript, English pages 8190/91, German page 8264).

Closing Brief Gajewski

As the works of Sparte III were scattered all over Germany and as some of them were some hundred kilometers from Wolfen, the defendant's activity as head of the Sparte was necessarily limited to a supervision of the technical management. The particulars of this will be discussed at a later stage. In his capacity as head of the Sparte and as works manager, the defendant was practically entirely independent, as were his colleagues in their respective fields of work.

(See Gajewski's testimony, reference aforementioned,

Ter Meer's testimony, Transcript, English pages 6907-11,

German pages 6781-85.)

In such business matters and occurrences as lay outside of his sphere, as defined above, the defendant was informed only on general lines, on the basis of reports submitted in the meetings of the Technical Committee and the Vorstand. This information could not deal with details but could only extend to broad lines for the simple reason that in each of these meetings an extensive program had to be dealt with in a few hours. Apart from that, the defendant's technical knowledge regarding the spheres of work of his colleagues was not at all adequate to arrive at an authoritative opinion on these details. Consequently, the defendant had to rely on the expert judgment of his colleagues, wherever their spheres of task were concerned, just as, in their turn, they had to do whenever fundamental questions coming under the jurisdiction of the defendant were brought up for discussion in the above-mentioned bodies. (Gremion)

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It needs no clearer explanation that such division of the work was absolutely necessary in a Konzern of the size of the I.G. The sense of responsibility of the members of the Vorstand and the relations of mutual confidence that existed between them were therefore fully justified because those who were promoted to the Vorstand had usually first had to prove themselves during many years in other jobs.

(See Testimony Gajewski record English Page 8188 - 8190,
Testimony ter Meer record English Page 6889 - 92,
German Page 5764 - 67
and his statements in Exh. 330 XI - 5184,
Document Book 12, English Page 102,
German Page 84, also Testimony Hoerlein,
record English Page 5145/46, German Page 6202/3.)

4) With reference to the position of the defendant in public life, the Prosecution, as in the case of all the other defendants, has submitted to the Tribunal a list of the positions held by him,

(Exh. 389, XI - 9760, Document Book 11,
English Page 33, German Page 36)

in order to create the impression that Gajewski had played a big public role during the Nazi-time. In this connection, reference need only be made to the testimony of the defendant.

(Record English Page 8193-94, German Page 8265-68)

From this, as well as from the document itself it can be seen that not less than 18 of the 32 positions mentioned therein were immediately connected with the I.G. and that the remaining posts consisted only of membership of professional associations and corporations which membership, moreover, was of a purely formal nature, with the exception of the position as manager of

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the sub section (Fachgruppe) "Chemical manufacture of Fibres". In 1941, the defendant had to give up this, his only leading position outside of the I.G. in a corporation of the so-called Organization of Industrial Economy, owing to the ever increasing friction with the Reich Ministry of Economics.

(Testimony Gajewski Record, English Page 8193,
German Page 8266,
also Gajewski Document 49, Exh. 24, Document
Book III Page 28, Affidavit Dr. Hartmann.)

Finally, it should be pointed out that the appointment of the defendant as Military Economy Leader (Wehrwirtschaftsführer) in 1942 through the Reich Ministry of Economics took place without any effort on his part and in spite of the fact that his plants were not armaments plants. This appointment was therefore a mere formality.

(Testimony Gajewski record English Page 8194,
German Page 8268).

5) In this connection I should like to mention briefly the defendant's character. The witnesses who know him through long personal collaboration describe him as a frank and honest man with great knowledge and social understanding.

Professor Eggert stated:

"During the period of my collaboration with Dr. Gajewski, I learnt to know him as an energetic and far-sighted Works Manager, a strict but just superior with the well-being of his staff and workmen at heart, and an upright man who had the courage of his own convictions.

(Exh. 5, Document 5 in Gajewski-Dokument Book I,
Page 31).

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Professor Mark states:

"While I had the occasion to work with Dr. Gajewski he always impressed me as being a man of great energy, high intelligence and of impeccable character. He was a hard worker himself, expected hard work from his colleagues and associates but was always ready to acknowledge achievement of others and give them the deserved credit."

(Exh. 3, Document 3 in Gajewski-Document Book I, Page 23.)

More detailed reference will be made later to the political attitude of the defendant and the help which he gave to his collaborators who were persecuted by National Socialism, as well as his attitude in welfare questions.

Count I of the Indictment.

1) In count I of the indictment all the defendants are charged with having participated in the planning, preparation, initiation and waging of wars of aggression and invasions of other countries.

The Defense has stated their general opinion with regard to the evidence submitted by the Prosecution in connection with this count of the indictment in the motion submitted to the Tribunal on 17 December 1947. Their attitude has been explained further by Dr. von Metzler in his plea on the constituent elements of crimes against peace. To avoid repetition I would refer you expressly to his plea. But in view of the fact that the Tribunal did not make a decision on the motion relating to count I of the indictment, the evidence submitted by the Prosecution in connection with count I of the indictment which would seem to be relevant to the defendant's case, will be examined in the following pages.

2) First of all it should be stated that the Prosecution have not submitted direct evidence to show that the defendant at any time knew, or was informed by his fellow defendants, or in some other way, of Hitler's aggressive aims. In order to substantiate their theory regarding the alleged crimes against peace, the Prosecution have submitted a vast volume of circumstantial evidence, details of which will be discussed on the following pages.

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3) In their presentation of evidence regarding count I of the indictment the Prosecution start with the statement that as early as 1932 I.G. laid the foundations of close collaboration with Hitler.

(cf. preliminary Prosecution Brief, page 33, part. 1, and documents quoted there.)

The Prosecution further refer to the financial assistance I.G. is alleged to have rendered to Hitler, enabling him to seize power and to consolidate his position.

(cf. preliminary Prosecution Brief, pp. 14/15, and documents listed there.)

In this connexion the defendant has stated that he did not take part in the events concerned and that he did not even know of most of them at the time. That applies particularly to the visit Buettelisch and Gettineau paid to Hitler in connexion with the plans for synthetic gasoline production in 1932, and to Bosch's negotiations with Hitler on the same problem in 1933. It applies further to the contribution of RM 400,000.— to the election fund of the NSDAP in February 1933, to the contribution of RM 100,000.— to the Sudeten German Aid Fund, and to the contribution of RM 500,000.— for the Sudetenland. Contrary to the allegations made by the Prosecution on pages 14/15 of the preliminary brief, these contributions were not discussed prior to payment by the Central Committee, of which the defendant was a member, or by the Vorstand. People were merely informed of the contribution of RM 100,000.— for the Sudeten German Aid Fund at a later date.

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(cf Exh. 824, NI-1318, Doc. Book No. 46, English page 36,
German page 39)

The three contributions to the SS in the years 1942-1944 of RM
100.000.— each, which are also mentioned by the Prosecution,

(cf Exh. 1585, NI-12400, Doc. Book 91, English page 23,
German page 26;
Exh. 1592, EC-453, Doc. Book 91, English page 41,
German page 38;
Exh. 1595, NI-3807, Doc. Book 91, English page 41,
German page 45.)

were not discussed in the Central Committee or in the Vorstand,
as the defendant stated in direct interrogation.

(cf Gajewski testimony transcript English page 8194-8197,
German page 8268-8270.)

With reference to the nature of such contributions I would merely
refer to the interrogation of the witness Lamore by Judge Shaker:

Question: Did the contributions of Farbon to the
Nazi-Forty or the Nazi-Program necessarily
imply sympathy with that program or not?
On the part of the donors I mean?

Answer: It is my firm conviction that there were
no expressions of sympathy whatsoever.

Question: Then, if that is true, what was the
motive or the reason for the donation
to a political party, with which the
donors had no sympathy? Why did they do
it, if they were not in sympathy with
it? Just tell us in a word!

Answer: I must assume, that such contributions
were made because the non participation
in such contributions would have led to
serious disadvantages for such firms.

(Transcript English pages 5653/54, German pages

4) The assertion of an alliance between the I.G. and Hitler leads
logically to the further allegation made by the Prosecution that
all the defendants had sympathized with National Socialism and
its aims.

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That is not the case with reference to the defendant Gajewski. As the Prosecution does not deny, he became only a nominal Party member in 1933, but neither filled any office inside the Party, nor ever belonged to any Party affiliation, such as the SS, SA, and so on. The decisive reason for his entry into the Party was the position he occupied in 1933 in the I.G., which appeared to him to make an abatement on his part, according to the information given him by representatives of the Party, incompatible with the interests of the I.G. He had inwardly the greatest objection to certain aims of the Party, especially their anti-religious attitude and the racial theory. On the other hand, he was convinced that such radical tendencies would soon wear off.

(See Statement Gajewski Transcript English Page 8177/28; German pp. 8248/49; also affidavit Herrmann, Exh. 11, Doc. 56 in Gajewski Doc. Book III, p. 52).

As the defendant's hopes in this respect did not materialize, he had, during the following years, severe clashes with Party and Government quarters, as a result of his unwilling attitude toward various fundamental tenets of the Party on various occasions and on various grounds. The denunciation of him to the Gestapo in Halle by Dr. Ringel, head of the Main Building Construction Agency in the Office of Technology, is referred to in this connection.

(See Exh. 1, Doc. 1 in Gajewski Doc. Book I, p. 1).

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This piece of evidence acquires particular importance, inasmuch as it represents a contemporary document, in which the defendant is described as an enemy of the State and his removal is demanded from his post in the I.G., for which the weightiest reasons are given, such as that he opposed himself to the Party, especially in his attitude to the Jewish question. In cross-examination of the defendant, the Prosecution attempted to discredit this document by characterizing the denunciation as merely the outcome of antagonism between the defendant and the former Staatsrat Dr. Schieber, who later occupied a leading office in the Armaments Ministry. The defendant has stated in this connection that he had indeed had differences with Dr. Schieber, but that the denunciation was not a result of these differences of opinion, but were due to his constant friction with the Party.

(Transcript English page 8319/21, German page 8402/05).

This statement is confirmed by the evidence of the witness Joerse, who, in reply to a corresponding question under cross-examination by the Prosecution, testified that the defendant had continually had the greatest difficulties with Party quarters.

(Transcript, English page 8506/08, German page 8587).

Dr. Schieber himself, when asked in the witness stand whether he could give an example of the strained relations between the I.G. and the Party or the Nazi Government, referred to the case of the defendant.

(Transcript, English page 5272, German page 5298).

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In view of the unequivocal contents of the above-mentioned Gajewski Exhibit 1, there need be no further elaboration of this point, save to quote the following remark from page 14 of the document:

"..... the determination of Dr. Gajewski not to accommodate himself to the wishes of the Party whenever these did not coincide with his own corresponded with his fight against all the Party members who, putting in the background their personal advantage, placed first the supremacy of the Party."

(See also Gajewski statement, English Transcript p. 8180/81, German Transcript, p. 8252/53).

A number of documents has been introduced by the Defense especially to prove the attitude of the defendant to the Jewish question. These are affidavits, the great majority of which are made by former Jewish co-workers of the defendant and which demonstrate that the defendant, in clear opposition to what was probably the most fundamental point of the Nazi program, helped these co-workers wherever he could.

(See Exh. 3-9, Doc. 3-9, in Gajewski Doc. Book I, pp. 23-47, and Exh. 11 and 10, Doc. 11 and 10, in Gajewski Doc. Book III, pp. 52 and 54).

With reference to the affidavit, Gajewski Exh. 4, by the former Jewish member of the Vorstand, Dr. Ollendorff, the Prosecution in cross-examination produced to the defendant Document MI-13 522 as Exh. 1957, connecting with it the question whether he had not informed the Gestapo they should arrest Dr. Ollendorff and conduct a search of his house, the latter having informed him confidentially that,

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as a Jew, he wanted to leave Germany.

(See Transcript, English pages 8325/27, German pages 8409/10).

The Exhibit in question, however, does not afford the slightest ground for assuming that the defendant had said one word about arrest or even thought of it. He brought this out quite clearly under cross-examination and re-examination. The letter in question, signed by the defendant and directed to the State Police Office Halle, under date of 25 November 1938, shows, firstly, that he did not obtain the knowledge of his emigration plans from his conversation with Dr. Ollendorff, but from the Reich Office for Industrial Construction (Wirtschaftsausbau), that is, from another official office. Consequently, he found himself in an extraordinarily difficult situation. Gajewski Exh. I, viz., the denunciation of him to the Gestapo, proves that it was precisely the fact that he let various former Jewish co-workers go abroad, who possessed important manufacturing secrets, that was specially charged against him.

(See pp. 11-14 of the Document).

Since now the case of Dr. Ollendorff had been taken up by an official agency and brought to his notice, he discussed this difficult situation with Geheimrat Bosch, who, while he did not give him any direct instruction, gave him to understand, however, that, in his opinion, he would in this case have to cover himself. The defendant had thereupon made an application for the execution of a house search.

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(See Statement Gajewski, Transcript, English pp. 8326/27 and 8331-35, German pp. 8409/10 and 8414-16; also Exh. 1957, Doc. NI - 13522).

As the house search did not result in Dr. Ollendorff being found to be in possession of data on manufacturing processes that it would have been against legal regulations to take abroad, the defendant had shortly thereafter written to the Gestapo in Halle that Dr. Ollendorff in these circumstances could be allowed without further proceedings to go abroad. According to the defendant's certain remembrance, this is the letter of 19 December 1938 which is mentioned in a handwritten note under the letter of 25 November 1938,

(See p. 3 of Exh. 1957, Doc. NI - 13522 and affidavit Exh. 80, Doc. 63, in Gajewski Doc. Book V, p. 31; also affidavit Miller, Exh. 81, Doc. 84, Supplement to Gajewski Doc. Book V, p. 36).

As is seen from the file memorandum on the visit of Mrs. Ollendorff to the defendant on 1 February 1939, the arrest of Dr. Ollendorff did not occur in any immediate connection with the house search, which took place in Untergrainau in November 1938, but followed much later, namely at the end of January, 1939, at his new domicile, Berlin, when, in compliance with an order from the Police Head Office, he went to fetch his identity card.

(See p. 3 of Exh. 1957, Doc. NI - 13522)

Accordingly, it is an entirely open question, whether any connection at all existed between the house search and the

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considerably later arrest. The evidence produces no proof of any such connection; on the contrary, the letter of 19 December 1938 makes it appear highly improbable. In any case it is firmly established that the defendant naturally had never thought of Dr. Ollendorff being arrested and, in view of the affidavits of former Jewish co-workers that have further been produced

(See Exh. 3-9, Doc. 3-9, in Gajewski Doc. Book I, pp. 33-47)

and also of the statements quoted in the denunciation, Exh. 1 Gajewski Doc. 1, and finally also the Schmitz documents 41 and 42

(See Exh. 41 and 42, Doc. 41 and 42, Schmitz Doc. Book III, pp. 43 & 53)

to which reference is again expressly made here, there is no further explanation needed that the application for a house search had nothing to do with the fact that Dr. Ollendorff was a Jew. The contrary is sufficiently made evident by the fact that the defendant did everything he could, not only to get Dr. Ollendorff out of prison as quickly as possible, but also to help him to get abroad and that, in these efforts, he gave no consideration to the circumstance that Dr. Ollendorff was a Jew and that such intervention could have had very unpleasant consequences for the defendant in his position.

(See letter of defendant of 15 June 1939 to Dr. Ollendorff attached to Gajewski Doc. 4, and the evidence of Dr. Ollendorff in this document, the correctness of which is not disputed by the Prosecution).

The defendant under re-examination specially emphasized

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that not only he, but also his co-workers, were much affected by the misfortune of Dr. Ollendorff.

(Transcript, English Pages 8391-33, German Pages 8411, 16).

From the evidence of the former Jewish co-workers of the defendant, to which we have already drawn the attention of the Court on Page 12 of this brief, we could only quote the following striking passage from the affidavit of Dr. Luft, which the latter sent spontaneously to the wife of the defendant:

"As a matter of fact, I crossed the frontier without inconvenience, which proved that your husband had intervened on my behalf in some way or other. I am convinced that otherwise I would not be alive and in a position to send you these lines, and if this letter might contribute to return only a small part of the thanks I owe to your husband, it would be a special satisfaction for me.

It is my desire that your husband might succeed in convincing his judges of his fair and sincere position which nobody may have doubts about who had opportunity to know him well."

(See Page 3 of Exh. 6, Document 6, Gajewski Document Book I, Page 35)

That the defendant did not protect only former Jewish co-workers, but also other persons persecuted by National-Socialism is shown, for example, in the affidavit of Dr. Miller, who specially emphasized therein that, despite the continuous pressure of the then Ortsgruppenleiter of the NSDAP, the works chairman of the DAF and other quarters, the defendant had not been willing to dismiss a number of people from the witness's own department who belonged to "Jehovah's Witnesses" (Bibelforscher).

(See Exhibit 10, Document 56, Gajewski Document Book III, Page 54)

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5) Conclusion: The statements made up to now lead to the conclusion that there can be no question of any participation of the defendant in an alleged alliance with Hitler. On the contrary, from the very beginning of the National Socialist regime, he found himself in difficulties time and time again, resulting from his undisguised rejection of the fundamental postulates of the Party in the realms of ideology and business. During the cross-examination, the Prosecution reproached the defendant with some documents, which had not yet been discussed, in order to attack his testimony concerning his relations to the Party and his difficulties with the Gestapo. The relevancy of these documents to a trial on the grounds of alleged war crimes is so small, that the Defense refrains from dealing with ^{them} / in detail. According to their opinion, the proper place for such matters is at the most a denazification trial. In the following, only the documents in question will be quoted and the statements made by the defendant and the counter-evidence submitted will be pointed out at the same time.

- a) Exh. 1950, Document NI-13568;
(Presence of the defendant in Nuremberg on the occasion of the Reich Party Congress 1937); cf. the statement by Gajewski, Transcript English P.8316-18, German P.8399-0401.
- b) Exh. 1951, Document NI-13 545;
cf. Exh. 80, Document 03, in the Gajewski Document Book V, P. 31.

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and statement by Gajewski, Transcript English P. 3318,
German P. 8401.

c) Ech. 1952, Document NI-13 570;
cf. statement by Gajewski, English P. 8320/21,
German P. 8404.

6) Furthermore the Prosecution asserts that within the framework of rebuilding the German Wehrmacht, the I.G. co-operated closely with the Wehrmacht Authorities. In this connection it refers to the establishment of the Vermittlungsstelle W in Berlin and points out that this Office played an important part in connection with providing the I.G. with mobilization plans, safeguarding against air raids (tactical exercises), counter-espionage measures, application for secret patents, stock-piling of materials, and the like.

The affidavit by Dr. Moyer shows that the defendant Gajewski always ^{from} maintained a certain aloofness/ the Vermittlungsstelle W, considering, among other things, the kind of products made by Sparte III. Dr. Moyer handled the problems in connection with the Vermittlungsstelle W, next to other and more important matters in Wolfen. The Sparte III had no special representative in the Vermittlungsstelle W in Berlin. The correctness of this statement is also corroborated through the statement made by the Prosecution witness, Dr. WAGNER and his deposition under cross-examination.

(See Ech. 14, Dec. 10, Gajewski-Document Book I, P. 48;
Furthermore Ech. 142, Document NI-8923, Document
Book 6, English P. 35; German P. 59;
and deposition Wagner, Transcript, English P. 611/12,
German P. 581).

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What little importance the Vermittlungsstelle W had, as far as tasks and the volumes of the same are concerned, is shown particularly plainly by the testimony of the Prosecution witness, Dr. Wagner.

(Compare with Dr. Wagner's deposition in another passage)

As far as the mobilization plans are concerned, General HUEHNESCH, who formerly had been active in the Ordnance Office of the Army, has stated that these plans were prepared only if the interested branch of the Wehrmacht requested them. The industry had no influence on this action; it was not even consulted.

(Compare with the testimony of Huehnemann, Transcript, English P. 13 496, German P. 13 769)

The execution of the so-called Mob-plans had hardly any importance for the Sparte III of the I.G., as is shown in detail by the affidavit by Dr. Meyer, quoted above. Furthermore, as stated by Dr. Meyer, at the instigation of the defendant the so-called tactical exercises were not carried out, because he did not attach any importance to them.

With regard to the Abwehr, may I draw your attention to:

Ech. 2141, Document NI-14 312,

which deals with a memorandum of a conference on Abwehr-matters, held in Frankfurt a. Main, on 2 May 1941, in which the Chief Engineer of Sparte III, Dipl. Ing. RIESS, who attended the meeting as the representative of Sparte III, stated the following:

I do not think that we in Sparte III need to take any special measures in the war, as a consequence of this conference."

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Referring to the applications for secret patents, in particular for the Secrets III, the Prosecution did not produce any evidence; just as nothing was produced concerning the alleged hoarding of materials. Obviously it does not require any detailed explanation to show, that these things could not have had any practical importance worth mentioning in the line of photographic products and textile raw materials.

7) Furthermore the Prosecution emphasizes the part of the I.G. played in the Four-Year Plan. It claims, that within the framework of this plan, the I.G. had expanded tremendously its production capacity, in order to create thereby the necessary preparation for building up the Nazi war machine for aggressive warfare. As far as the defendant's sphere of activity is concerned, photographic products did not fall within the scope of the Four-Year Plan, which did not refer to them. As stated on oath by the witness Dr. MILLER, the former director of the photographic production in the film-factory,

(cf. Zsh. 15, Document 40, Gajowski-Dokument Book III, P. 1)

the development of the photographic production depended solely on the improvement of the quality and the growing absorption and sales on the markets, and that there can be no doubt whatsoever that there existed no extraordinary expansion or any connection with the Four-Year Plan.

In contrast to this, the synthetic fibers,

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especially the production of spun rayon played an important part within the framework of the autarky-program, since in the field of textiles and textile raw materials, Germany had to rely to the greater part on imports. The Reich Economics Ministry approached the I.G., that is, the defendant, as early as 1933/34 on account of this production. At that time the I.G. was the only firm producing spun rayon. The defendant, however, took up for purely economic considerations a very reserved attitude to the suggestions of the government, and presented his point of view also in a memorandum. This resulted in the State taking the initiative itself in setting up and promoting a national production-plan for synthetic fibers. On its initiative and with its support, from then on a large number of new factories for producing spun rayon were erected. How the attitude of the defendant influenced developments, may be seen from the fact that in 1944 the I.G. produced only 16.2 % of the total German production of spun rayon. Obviously the situation would have been entirely different, had the manufacturing capacity of the I.G. been expanded in accordance with the wishes of the Reich Economics Ministry. In that case, there can be no doubt that the I.G. could have retained its leading role as a manufacturer of spun rayon.

(cf. Exh. 18, Document 43, Gajowski Document Book III, P. 13 (Affidavit van Book));

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as also statement Gajewski, Transcript, English page 828-1f, German page 8280-8282); furthermore the Affidavit Dr. Hartmann, Exh. 24, Doc. 49 Gajewski-Document Book III, page 28)

The I.G. increased the production of artificial silk only to a limited extent in the years after 1933, though it seemed very natural to promote the self-sufficiency striven for by the government, in the field of raw materials for textiles by a considerable increase of the production capacity for artificial silk. This follows clearly from the affidavit Dunst

(Exh.19, Doc. 44, Gajewski-Document Book III, page 17)

and the figures given there; furthermore from the

Documents 45-49, Exh. 28-24, all in Gajewski Document Book III, page 21-28

which confirm also the correctness of the above statement.

The Prosecution submitted a survey made by Dr. Struss according to which the share of the I.G. in the German production of spun rayon (Zellwolle) is indicated as 28% and in the German production of artificial silk as 24% in 1943. These figures are incorrect as the defendant stated in his interrogation. This share amounted in truth for spun rayon to approximately 18% and for artificial silk to approximately 17% in 1943.

(cf. Exh. 615, Document NI-16011, Document Book 34, English page 125, German page 229; furthermore statement Gajewski, Transcript, English page German page 8283.)

Gajewski's statement is confirmed by

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Exh. 18, 19, 20, 21 and 22,
Document 43, 44, 45, 46 and 47,
all in Gajewski Document Book III,
Pages 13-25.

The Prosecution asserts with regard to the basic importance of the Four Year Plan that it was designed to carry out Hitler's plans of conquest and that the defendants knew this very well. The reasons which contradict such a conclusion were convincingly pointed out by the defendant in his personal interrogation. Just in 1936 at the time of the Olympic Games in Berlin which were considered by every German as an international display, nobody thought of a war and neither did the defendant. The Four Year Plan was on the contrary carried out as an undertaking to increase the German self-sufficiency with regard to the difficulties of the Reich concerning foreign exchange which were in turn a consequence of the disturbances of the international trade at that time.

The defendant had neither learned through one of his colleagues of Goring's speech reproduced in

Exh. 423, Document NI-4192, volume 2C, English page 15,
German page 7C,

nor was any reproduction in the German press known to him which contains the sentence

"that Germany was already in the midst of mobilization"

(see deposition Gajewski, Transcript, English page 8215/16
German page 8287/88).

The Sparte of the defendant had practically nothing whatsoever to do with the office of the Plenipotentiary General for special questions of chemical production in the Four Year Plan,

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because he was not competent for the products manufactured by this Sparte. As a consequence of it the defendant was not an honorary associate of that office as erroneously stated by the defendant Ilgner in

Exh. 377, Document NI-6544, Document Beck 14, English page 89, German page 116, and Exh. 512, Document NI-6713, Document Beck 25, English page 7, German page 10.
(See deposition Gajewski, Transcript, English page 8216, German page 8289, as also deposition Krauch, Transcript, English page 5409/10, German page 5439).

B) The following must be said with regard to the defendant Gajewski concerning the Prosecution's additional assertion that the conduct

I.G. enabled Germany to / / an aggressive war: -

Nothing of military character was produced by the Sparte III which was headed by him, except fuses for anti-aircraft shells at the Kaserwerk Muenchen and gun powder at the Rottweil plant.

The manufacture of fuses was carried out at the instance of the Army High Command after conscription had been re-introduced. It was negligible compared to the total German production. Moreover it was used for a definitely defensive weapon.

(cf. Exh. 253, Document NI-9365, Document Beck 14, English page 3, German page 3, affidavit Dr. Lingg; and deposition Gajewski, Transcript, English page 8217/18, German page 8290).

As far as the manufacture of gun-powder at Rottweil is concerned, it was not directed in technical and commercial respect by the

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I.G. but exclusively by the Dynamit-Action-Gesellschaft (D.A.G.). The Sparte III had, therefore, nothing whatsoever to do with it either in commercial or in technical respect. It was a plant which had been "lent" ("Leihbetrieb") to the D.A.G.

(cf. affidavit Dr. Fink, Exh. 12, Document 50, Gajewski Document Book III, page 32; and statement Gajewski, Transcript, English page 8198, German page 8271.)

Furthermore the Prosecution submitted the

Exh. 697 and 696, Document NI-7242 and NI-7237, Document Book 32, English page 85 and 83, German page 88 and 84,

from which follows that a so-called contract plant existed in the Rottweil plant on order of the High Command of the Wehrmacht where experiments with hexogen, a high-explosive, were carried out. This was only a small pilot plant, but it also was completely under the care of the D.A.G.

(cf. affidavit Dr. Fink, Exh. 13, Document 51, Gajewski Document Book III, page 37, as also statement Gajewski, Transcript, English page 8198/99, German page 8271.)

The reason why this small pilot plant was established at Rottweil was that some work on hexogen had been done there already. But this work on hexogen had nothing whatsoever to do with the field of the so-called high efficiency explosives, but only took place within the limits of experiments for the purpose of producing smokeless gun power, since powder for hunting purposes was produced in Rottweil on a contract basis for the D.A.G. as already mentioned.

(cf. Exh. 13, Document 51, Gajewski Document Book III, page 37.)

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In connection with the aforementioned Exhibit No. 696, which contains a list of loans granted by the German Reich to I.G., in which among others the Camera Works in Munich and the Rottweil Works were also mentioned, the defendant pointed out in his interrogation that he himself was not familiar with this matter in detail. He explained, however, that merely advance payments were involved which were covered by increased amortizations, as was customary with new types of products. In the case of the Camera Works, for instance, the advance payments in question were settled within one year.

(Please refer to Gajewski's statement, transcript English page 8201, German page 8273.)

The Prosecution asserts in its preliminary statement, part I, pages 42 and 44, that the new film factory of Sparte III at Landsberg, the building of which started in 1938, was meant as a stand-by plant in case of war for the production of synthetic fibres. This explanation is completely wrong. As the defendant explained in his direct examination, the Landsberg Works were planned exclusively as a factory for photographic articles. Construction stopped as a result of the outbreak of war, because material for this purpose was no longer made available by the authorities. Then in 1942, in accordance with a compulsory production order (Auflage) from the Reich Ministry of Economics, the production of fully-synthetic fibres was started in the Landsberg Works.

(See Gajewski's statement, transcript English page, German page 8278.)

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That this explanation is correct is proved by Dr. Miller's affidavit, by the IGA (Technical Committee)'s transcripts authorizing the expenditure for the construction of the Landsberg plant as a factory for photographic articles and its change-over to the production of synthetic fibres and also by Hans Kehrle's affidavit with regard to the compulsory production order in question, issued by the Reich Ministry of Economics in 1942.

(see Exhibit 15, Document 40,
" " 16, " 41,
" " 17, " 42,
" " 23, " 48,

all in Gajewski's Document Book III, pages 1 to 12 and page 26;
Also Exh. 78, Doc. 81, Gajewski's Doc. Book V, page 25.)

Obviously, on account of this explanation the Prosecution then tried in the cross-examination of the defendant Gajewski to connect the construction of Landsberg with the purposes of military economy in another way. The defendant was shown

Exh. 1947, Doc. NI-13 530,

viz. a letter from the Reich Minister of Economics, dated 28 September 1938, in which the Ministry confirms the reasons which the I.G. brought forward in order to obtain permission for the building scheme. Among other things, it says that the demand for aviation film was to be covered by a second production center as well as the Wolfen Film Factory. Apart from this, however, specific reference has been made to the commencement of color-film production and to the difficulties in the labor market at Wolfen. To this charge the defendant replied that in view of the situation at that time

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some reason had to be given which was not only of a private economic nature if one wished to obtain a building permit. The demand for aviation film could easily be met by the Wolfen Film Factory, nor was aviation film later produced in Landsberg.

(See Gajewski's statement, transcript English pages 8312/13, German Page 8395.)

The correctness of this statement is also confirmed by the affidavit of the Chief Engineer of the Landsberg plant, Dipl.-Ing. Richter.

(See Exh. 78, Doc. 81, Gajewski's Doc. Book V, page 25)

Thereupon the Prosecution pointed out that the Konzerngesellschaften D&G (Dynamit A.G.) and Wolff & Co., producing explosives and gunpowder, were also affiliated to Sparte III of which the defendant was in charge. The affiliation of these companies to Sparte III was, as the defendant explained in his interrogation, merely a matter of form. It took place when the three Sparten were established merely because both firms had points of contact with Sparte III through cellulose or cellulose derivatives which play a considerable role in connection with the production of Sparte III as well. The defendant in no way held the position of a superior in relation to the managers of these firms. On the contrary, they and they alone were responsible for the conduct of their business affairs,

(See Gajewski's statement, transcript English pages 8218-23, German pages 8291-94; also transcript English page 8225, German page 8297.)

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The Chief of the TBA office, Dr. Struss, characterizes the relationship between the management of Sparte III and its affiliated Konzerngesellschaften as follows:

"The influence of the management of the Sparte on the affiliated plants of Sparte III with the exception of Eilenburg and Sehma was extremely little. (Underlined by us)."

(See Exh. 391, Doc. NI-9487, Doc. Book 15, English page 119, German page 137.)

Therefore, the defendant was not familiar with the work of these firms, especially in the field of military explosives and gun-powder, in any way that might have enabled him to obtain even a rough insight.

As to the DAG (Dynamit A.G.) and its subsidiary company, the so-called "Verwert-Chemie", the appropriate evidence will be dealt with in a special Closing Brief to which specific reference is made here. With regard to Wolff & Co., reference is made to the abovementioned Exhibit 391, where on English page 94, German page 106 Dr. Struss says:

"After having lost the major part of its gun-powder production facilities at the end of the first world war WOLFF & CO. started to manufacture Transparit. Since that was a cellulose product, it seemed the obvious thing to allocate this firm to Sparte III. However, the connection with Sparte III was quite slight. (Underlined by ourselves)."

Moreover on the same page of his declaration the witness testifies the following:

"Wolff & Co. requested very few loans and only for purposes not connected with gun-powder production". (Underlined by ourselves)."

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Finally, Dr. Struss testified on English page 119, German page 137 of his declaration (Exh. 391, Doc. NI-9487, Doc. Book 15) with reference to the work of Wolff & Co. and its subsidiary company "Eibia", in the field of the gun-powder production and/or establishment of new plants in this field:

"In technical matters, I.G. exerted no influence on these new plants....." (Underlined by ourselves).

The Prosecution produced the following two documents in the cross-examination of the defendant:

Exh. 1935, Doc. NI-13 536
" 1935, " NI-13 528

and asked whether he had been informed of the negotiations between Wolff & Co. and the Army Ordnance Office and whether he had not reported about the activity of this company in the field of armaments to the Vorstand (Executive Board) of I.G. The Prosecution hereby referred to the fact that the defendant had signed a pledge of secrecy, in case, in his capacity as member of the Aufsichtsrat of Wolff & Co. he might gain knowledge of some business done by this company with the Wehrmacht, with the additional statement that he must make one exception inasmuch as he was obliged to report to the I.G.

(See Exh. 1935, Doc. NI-13 536, page 5 of the original).
In reply the defendant declared that the receipt of this pledge-form was just as much a pure formality as his relationship with Wolff & Co. themselves.

He had only been twice to Wolff & Co., and he had never made a report to the Central Committee of I.G. regarding the activities of that firm.

(See testimony Gajewski, record English page 8293/94, German page 8387-75).

With regard to Exh. 1939 reference need be made only to the defendant's testimony.

(Transcript English page 8298/99, German page 8380-81.)

The companies named in the above frequently referred to Exhibit 391, Document NI-9487, as having been affiliated to Sparte III, are of no interest in connection with Count I of the Indictment. They were unquestionably not engaged in armaments production. Only part of the Nitro-Cellulose which was produced by the firm of Deutsche Celluloid-Fabrik Eilenburg during the war went into powder production. The nitro-cellulose which was produced at Eilenburg was mainly used for the manufacture of raw film and varnish, which explains the affiliation to Sparte III.

The Richard-Schubert-A.G., as small textile plant, served to process the artificial silk manufactured at Wolfen to commercial requirements.

The firm of Kalle & Co. made themselves technically and commercially quite independent of I.G. Their sphere was the manufacture of colloidine and blue print paper.

(See affidavit Dr. Strass, Exh. 391, Document NI-9487, Document Book 15, English page 96 and 119, German page 106 and 137; also testimony Gajewski, record English page 8223/24, German page 8295/97).

9) From the statements in regard to the activities or sphere of tasks of the defendant it can be seen,

that the production sphere of I.G. of which he was in charge in so far played no part within the re-armament as it was not concerned with armament products. In so far as the German companies formally affiliated to Sparte III, namely DAG and Wolff Walsrode, produced explosives or powder for army purposes, the defendant had neither any influence in technical respects, nor did he ever have an insight into the kind and extent of this production which would have enabled him to get anything like a complete picture. Furthermore, not even a complete knowledge of their activities in the field of military explosives and powder could have given him reason to assume that the German Government was planning an aggressive war, because the production in this field was still at the outbreak of war entirely insufficient.

(See final statement regarding the DAG, point 8, and the evidence mentioned therein.)

The Prosecution has referred in this connection to a number of productions of the I.G. which were outside of the field of activation of the defendant, in particular nitrogen, synthetic propellants, buna, and light metals. The Prosecution regards the development of the capacities of the I.G. as a deliberate contribution of the I.G. to the preparation of aggressive war planned by Hitler. It has already been pointed out (page 3 and 4 of this statement) that the individual defendants had only very general knowledge with regard to productions which were outside of

their sphere of responsibility, and the information in the joint meetings of the Vorstand and the Technical Committee could only be of a very general nature. From what the defendant learned at such meetings or through occasional discussions with the other defendants, he could^{not} in any case have come to the conclusion that any of them knew anything about Hitler's aggressive plans and would, by increasing the capacities of the productions of which he was in charge, become the instrument of these aggressive plans.

(See testimony Gajowski, record English page 8227,
German page 8298).

In particular, the defendant never knew any details about the alleged participation of the I.G. in the production of poison gas, which is easily explained by the strict orders in regard to the keeping secret of this production.

(See testimony Gajowski, record English page 8227,
German page 8298).

This complex will also be dealt with fully by the Defense Counsel of the defendants Ambros and Hoerlein, to whose statements attention is here expressly drawn.

10) With reference to the propaganda and espionage activities of the I.G. abroad, dealt with at great length by the Prosecution, reference is made in the main to the statements of Defense Counsel of the defendant Eigner, which deal fully with these questions. The defendant Gajowski is mentioned by name in this connection neither during the submission of the evidence nor in the detailed statements of the Prosecution in their

provisional memorandum, Part I, Article IV G, nor was he brought into any connection with the above mentioned events. Moreover, he has stated under direct examination that neither he nor any of his collaborators on their journeys abroad ever received an order which had anything to do with propaganda or espionage.

(See testimony Gajowski, record English page 8227, German page 8299).

11) In order to prove Count I of the Indictment, the Prosecution also alleges that I.G. deliberately weakened the war potential of the probable future enemy States, by either concluding agreements which had the aim of either paralyzing militarily important productions in these countries or by violating existing agreements in these fields by keeping back experience, contrary to their obligations. The defendant stated in his direct examination that he only knew superficially about the agreements mentioned by the Prosecution in this connection and their execution. He had never had any reason to assume, however, on the basis of any information or remarks by his colleagues, in whose field of work these agreements came, that the I.G., as asserted by the Prosecution, was endeavoring to hinder the armaments production of other countries, by keeping back experience in war-essential production spheres, contrary to their contractual obligations.

(Record English page 8228, German page 8299).

The defendant is right in stressing, that such an

attitude would have been absurd for the I.G., as an enterprise which was engaged in export and world trade,

(Compare direct examination, record English page 8228, German page 8299).

The Defense Counsel of a number of defendants have given several examples, which show clearly the attitude of the I.G. towards foreign firms in regard to the exchange of experiences and which fully confirm the above-mentioned attitude of the defendant Gajowski. As an example, reference may be made to the cases regarding the magnesium, nickel, and phosphorus fields mentioned by the Defense Counsel of the defendant Haefliger in their final plea.

The defendant Gajowski also described in his direct examination the attitude of his own Sparte with regard to an exchange of experiences with foreign countries, in particular the USA, and stressed that he had attached great importance to a connection and fruitful exchange of experiences with the chemical competitor firms abroad. Accordingly, the firms of Dupont and General Aniline & Film Corp., for instance, up to the outbreak of war between Germany and the USA, i.e., even after the outbreak of war in Europe, were currently informed of the newest information in the respective fields, on the basis of the agreements, as long as there existed the slightest possibility of contacting them. This exchange of experiences was even extended to the secret field of fine-grained emulsions, for which even patent application had not been made in Germany for reasons of secrecy.

(See testimony Gajowski, record, English page 8230/31, German page 8301/02).

This statement by the defendant is confirmed in detail in the affidavit by Dr. Hediger,

(Exh. 25, Document 52, Gajewski Doc. Book III, Page 41)

who was chief of the Patents Department of the Sparte until 1945 and concentrates his statements on the fact that from 1931 until the outbreak of war with the USA, on the basis of appropriate contracts, all important technical developments were made available to United States industry, whether in the sphere of textile raw materials or of photography.

It deserves to be emphasized in this connection that - as the defendant states in his direct examination - he personally handed over to representatives of the General Aniline and Film Corp., whom he met at the time, the most important basic materials for the manufacture of color film in 1939 and a second time in 1940, in fulfillment of his contractual obligations, since the shipping of these articles presented great difficulties at that time.

(Transcript Eng. P. 8231, German P. 8302)

The conduct of the defendant thus proven, and his faithful adherence to the contract by the free exchange of experimental data in the fields covered by his Sparte is all the more remarkable, since it was general knowledge after the outbreak of the European war that the sympathies of the USA were on the side of the Allies, and since the possibility of America's entering the war had to be reckoned with.

(On this see also Affidavit Dr. Miller, Exh. 15, Doc. 40, Gajewski Doc. Book III, Page 1, ref. exchange of experimental data).

These examples are in any case a further indication that the I.G. or the defendant in their arrangements

with foreign firms and their execution allowed themselves to be guided solely by economic and not by political standards, as the Prosecution asserts.

With relation to DAG the Prosecution has submitted the following documents in this connection:

Exs. 1011, 1012, 1013, and 1014, Dec. NI-10969, NI-10970, NI-10 969 and NI-10 964 in Doc. Book 13, Eng. Page 188, 211, 222, and 224, German Page 211, 226, 236, 238.

These deal with contractual agreements between the Rheinisch-Westfaelische Sprengstoff A.G. or DAG and the Foxington Arms Company Inc. with reference to the licensing of the Tetrazon process, which according to the assertions of the Prosecution had the purpose of making it impossible for the USA to supply Tetrazon to the British Empire as a military explosive; British military strength in the recent war is supposed to have been considerably weakened through this. This case is examined in detail in the DAG Trial Brief under Point 10). It need only be pointed out here that the contract dates from 1929, which, however, does not prevent the Prosecution from describing this happening as a contribution to the arming of the Nazi war machine by weakening the war potential of the enemy. Moreover, the Rheinisch-Westfaelische Sprengstoff A.G. (RWS) was not at that time merged with DAG at all - this did not take place until 1932 - and therefore neither the defendant nor I.G. had anything to do with these matters at the time. The defendant stated in the witness stand that he learned of these contracts for the first time in

connection with the evidence submitted by the Prosecution,

(See Gajewski statement, Transcript English Page 8228/29,
German Page 8300/01)

12) As far the Prosecution's assertion is concerned, according to which the I.G., through hoarding and obtaining war materials, contributed to the strengthening of the Nazi war machine, reference should be made to the statements for the Defense by those defendants whose sphere of work covers the products mentioned in this connection. The Prosecution has not in any case made a statement in this connection concerning the sphere of Sparte III, so that any special statement by Dr. Gajewski's Defense Counsel would be superfluous.

13) In conclusion, I shall now deal with the so-called dolus in relation to Count I of the indictment. In the case of crime against peace or participation in such an offense, it is presupposed that the defendant has known of the aggressive plans of the German government. The defendant has made detailed statements in this connection in his direct examination.

(Transcript, Eng. Pages 8233-39, German Pages 8304-8311).

He explained in particular how until the outbreak of war the announcements in the Press, on the radio and in speeches in Germany were always on the lines of emphatic assertion by the German government of its peaceful intentions. The defendant also stated that in view of the open way in which the German government had represented to foreign countries its measures in the sphere of

internal policy, he had had no cause to mistrust these announcements. As a striking example of this attitude of his, he refers to the building of the Landsberg works in 1938 at a place only 27 or 37 km. from the Polish border. The erection of this factory, which served only peaceful purposes, and the choice of its site did not take place at the injunction of Reich authorities, but was chosen by the defendant of his own accord and on purely technical and economic grounds. The defendant had had a loan of about RM 70,000,000 approved by the Reich on 7 August 1939 for the construction of these works, which were to be finished in 1941.

(See Gajowski statement, Transcript English Page 8233, German Page 8305).

This fact is the best proof of the defendant's lack of any suspicion with regard to plans already made by the German government for the waging of a war of aggression; for had he mistrusted Hitler's protestations that he would solve the Polish problem in a peaceful manner, he would undoubtedly have acted differently at this point.

The defendant also made a detailed statement on the fact that this conviction of his was not shaken by the annexation of Austria and the Sudetenland and the creation of the Protectorate of Bohemia and Moravia, once again because of the announcements made at the time in the Press and on the radio, as in the case of Austria and the Sudetenland, in consideration of the fact that territories were involved which were settled by Germans and their annexation was

at that time recognized abroad.

At the end of his interrogation on this point the defendant described with the utmost conviction how neither the I.G. as such nor he personally could have been interested in war, but now, on the contrary, war could mean only an interruption of the development of the I.G. and especially of his own sphere of work. The Defense would like to conclude this section with a quotation from the interrogation of the defendant Gajewski (Transcript Eng. Page 6239, German Page 6311):

" If you ask me whether I believed in the possibility of another war, I would like to say to you that I could not welcome war at any time, any more than could my colleagues. We have-one and all - had a wonderful life's work, and mine was just as wonderful, and today in my 62nd year the war has destroyed my life's work. Thus I could never welcome a war."

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Count II of the Indictment.

1) The defendant Dr. Gajewski is not personally accused in connection with any of the spoliation charges under Count II of the Indictment. His name does not appear at all in the Preliminary Trial Brief of the Prosecution under Count II. None of the alleged acts of spoliation which concerned the Polish Dyestuff Factories, Morak Hydro, Francolor, Rhône-Poulenc, Klassische Sauerstoff-Werke and the so-called East companies was in any way connected with the sphere of work of his Sparte III.

The first conclusion to be drawn from this is that the defendant did not in any of the cases of alleged spoliation exert any activity with the object of himself taking any part in the negotiations which led to the conclusion of the contract, or in the actual conclusion or implementing of the contracts.

The defendant is charged by the Prosecution in connection with Count II of the Indictment only from the standpoint of alleged joint responsibility of all Vorstand members for all occurrences within the I.G.

The Defense maintains the point of view that such a joint responsibility as asserted by the Prosecution did not exist, in view of the manner in which the business management was actually conducted, and of the distribution of responsibility amongst the different Vorstand members which resulted. This has already been discussed under No. 3 on pages 3/4 of this brief. The Defense Counsel for

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the defendant, v. Kierien, deals in particular with this problem, and - in order to avoid repetitions - we refer therefore to his statements.

The Defense Counsel for the defendant, Dr. Gajewski, furthermore contends that a mere knowledge of the existence of agreements, the conclusion of which constitutes plunder or spoliation, is not sufficient to convict a Vorstand member of participation in such a crime. Reference is made in this connection to the following quotation from the judgment of Tribunal No. II in Case IV versus Fohl et al:

"...But the phrase "being connected with" a crime means something more than having knowledge of it.
... There is an element of positive conduct implicit in the word "consent""
(cf. Transcript, Case IV, English text, page 811.)

But even if it is assumed that such a knowledge is sufficient for a conviction, the Prosecution did not, in the opinion of the Defense, succeed, in proving such a knowledge in the case of the defendant, Dr. Gajewski.

The Defense Counsel for the defendant, Dr. Gajewski, does not deal with the individual alleged spoliation cases, in view of the fact that these cases are dealt with by the Defense Counsel for the defendants who are directly connected with them. He therefore refers on this point to their detailed explanations and shares their view that none of the cases presented by the Prosecution involved spoliation within the meaning of Control Council Law No. 10. The following statements concerning Dr. Gajewski's knowledge of the various facts, as asserted by the

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Prosecution, are therefore made only as a safeguard.

The defendant stated in direct examination that he was only broadly informed, through the reports submitted in the meetings of the Vorstand and the Technical Committee, and that neither he nor his co-workers had anything to do with these contracts or with the preceding negotiations.

(Transcript, English text, page 8239/40, German text, page 8312.)

In view of the fact that the reports, as previously stated, were presented in a condensed form, owing to the short duration of the various meetings and their extensive agenda, the defendant could not possibly be so informed, especially as to the details of the manner in which these contracts were concluded, as to enable him to draw the necessary conclusions in regard to the proper conduct of the contract negotiations. It is decisive in this connection that the defendant is not a businessman, but a technician, and was therefore never closely concerned with commercial and contractual questions. He had to and could rely on it that his colleagues, who were competent for these tasks, had examined and approved these agreements from a commercial and legal point of view, unless it happened that he learned of circumstances which caused him to doubt whether his colleagues had proceeded correctly.

The defendant stated expressly in direct examination that he had never gained the impression from any report or in any other manner that any of the transactions

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mentioned by the Prosecution constituted a case of spoliation or -
to put it more simply - of a violation of the law.

(Transcript, English text, page 8240, German text, page 8312.)

The Prosecution has not produced any evidence which could shake
these statements of the defendant.

2) The Prosecution has introduced a report by the Chief of the
Political-Economic Policy Department of the I.G., concerning a
conversation at the Reich Ministry for Economic Affairs, which
states that in the opinion of the Reich Ministry for Economic
Affairs, the Americans should be removed from French production,
and mentioned as an example the photographic firm of Kodak-Pathé,
the Paris subsidiary of Kodak Rochester.

(See Exh. 1053, Doc. NI-6840, Doc. Book 51, Part I, English
text, page 199.)

The defendant stated in direct examination that neither his Sparta
nor the Sales Combine Agfa ever submitted any suggestions or took
any steps in this direction.

(Transcript, English text, page 8240/41, German text, page 8313).

The defendant furthermore stated in this connection that in the
fall of 1940 and in the spring of 1941 respectively, he had been
requested by his colleague, Otto, of the commercial department to go
with him and the affiant Feindel to Paris, in order to conduct
negotiations with the representatives of Kodak on sales and import
questions. These negotiations were conducted in a friendly spirit.
Kodak-Pathé was at that time in a very difficult situation, because
a shortage of coal threatened to bring its production to a standstill.
The defendant and his colleague thereupon intervened at the Economic
Staff of the German Military Government and saw to it that the firm
was again

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supplied with coal, so that production could be continued. The defendant appeared personally before the above-mentioned Economic Staff in this matter.

(See direct examination Gajewski, Transcript, English text, pages 8240/41, German text, pages 8313/14).

This statement of the defendant was confirmed by the affidavit of Herr Feindel, who was present at the above-mentioned negotiations.

(Exh. 26, Document 11, Gajewski Doc. Book I, page 58).

It can be seen from this affidavit that the defendant refused to exercise any influence on Kodak-Pathe and that the negotiations in Paris resulted later in a gentlemen's agreement on the export of Agfa X-ray-positive films to France, on the basis of an agreement already reached in 1938. This agreement was reached in the spirit of the friendly relations which had existed for decades between the two companies.

(See further affidavit by Feindel, Exh. 27, Document 13, Gajewski Document Book III, p. 48.)

In his direct and re-direct examination, the affiant Feindel supplemented his testimony on this point by stating that, because of the lack of corresponding deliveries, the German export quota for France had not even been completely filled and that, in the course of the war, Kodak-Pathe assumed a more and more dominant position on the French market. He stated that the Agfa representation in Paris had repeatedly complained to him about this state of affairs, because they were naturally interested in obtaining greater deliveries from Germany, so that they might have a correspondingly higher turnover.

(Transcript, English page 11839/41, German page 12002/3)

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The affiant F e i n d e l testified under direct examination (as mentioned elsewhere) that at the negotiations held in the Reich Economics Ministry, which took place before the trip to Paris under discussion, the representatives of the Reich Economics Ministry had given him and Herr C t t c to understand, that it would be desirable to exercise German influence on Pathe. On the occasion of the conferences in Paris, it was the defendant himself who declared that the exercising of such an influence was out of the question.

Further, the affiant F e i n d e l confirms in his affidavit the statements by the defendant with respect to his efforts to eliminate Pathe-Kodak's production difficulties, which were due to the then prevailing lack of coal.

(Exh. 26, Document 11, Gajewski Document-Book I, page 58).

In cross-examination, the Prosecution handed over to Feindel the minutes of a conference of the "AGFA",

Exh. 232C, Document III-14039

held in Berlin, on 8 January 1941, in which, besides the affiant Feindel, the defendant had also participated. Among other things, these minutes contain the remark that, at the instigation of the AGFA, the firm Kodak-Pathe would experience difficulties with respect to any deliveries to other European countries, or to unoccupied France. Feindel asserted, in reply, that he had never heard that Kodak-Pathe had actually ever experienced such difficulties in the ensuing period. In this connection, he pointed on the one hand to the ~~conduct~~ of the German Liaison Agency in Paris, already mentioned,

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and on the other hand to the friendly relations with Kodak-Pathe. He further stated that, in his position with the AGFA, he would certainly have known, if in accordance with the ~~remark in the~~ minutes under discussion, difficulties really had been made for Kodak. He further explained that the acquisition of the Pathe company by Kodak Rochester at that time was solely in order to supply the French market and consequently the remaining European markets were never supplied by Kodak-Pathe.

In supplementing the explanations of the witness Feindel, the defendant Gajewski's Defense Counsel also carefully points out that, in the minutes submitted by the Prosecution as Exh. 232C, the difficulties mentioned therein are by no means further substantiated and that, from the quite general remark in question, no conclusion can be drawn of an activity on the AGFA which would fall under Count II.

The correctness of the statements of the defendant as well as those of the affiant Feindel is proved also by the testimony of Dr. Miller, who likewise confirms that the relations between the AGFA and the officials of the Kodak-Pathe were the best imaginable and that, during the German occupation of France, the AGFA exercised no influence of any kind on this company, but on the contrary saw to it, that it could continue its production. The witness, besides states the same of the large competition company in Belgium, namely, the firm Gevaert.

(Exh. 15, Document 4C, Gajewski Document Book II
page 1).

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In this connection the Defense submitted a statement, signed by the two leading directors of the firm Gevaert, dated 9 February 1948, in which it is confirmed that, during the whole period of the occupation of Belgium, the AGFA behaved correctly towards Gevaert and did not exercise any influence on them.

(Exh. 28, Document 54, Gajewski Document Book III, page 50).

In conclusion, it can accordingly be stated that the salescombine AGFA never used the fact of the occupation of the European countries to enrich itself at the expense of the local competition firms or to exercise financial or any other influence on them, such as the appointing of a trustee.

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Count III of the Prosecution

Under the heading of "Slave Labor and Mass-Murder", Count III deals with the forced mobilization of foreigners and prisoners for work in the plants of the I.G., the delivery of poison-gas to concentration camps for the purpose of the mass extermination of human beings and the carrying out of medical experiments on KZ-prisoners after artificially infecting them against their will, or without their consent.

1) Within the framework of the Prosecution's statements, in its preliminary memorandum concerning this count, dated 13 December 1947, the defendant Gajowski is mentioned by name in the following passages:

- a) as deputy chairman of the Technical Committee, which received regular reports on percentage of foreign workers, prisoners of war and other prisoners and convicts, and which approved the necessary means for new buildings for the purpose of lodging the so-called slave workers.

(English page 12, German page 12 of Exh. 1318,
Document NI-4999, Document Book 68, English p. 22);

- b) As a member of the so-called Betriebsfuhrer-Conferences, at which the important Betriebsfuhrer of the various I.G. works discussed social problems at regular intervals and exchanged their experiences; in particular as a participant at the Betriebsfuhrer-Conference in Schkopau, on 11 March 1941.

(English page 20, German page 20, Exh. 1329,
Document NI-6849, Document Book 68, English p. 90)

- c) as a participant in the meetings of the so-called Undertakings Council (Unternehmensbeirat), for the preparation of which the Betriebsfuhrer Conferences were arranged and in which, too, social problems of interest to all the works were discussed.

(English page 21, German page 21, Exh. 1329,
Document NI-6849, Document Book 68, English p. 90)

- d) as a participant in the TEA (Technical Committee) meetings - in particular the October meeting in 1942, in which the amounts for the building of the Buna-works of the I.G. in Auschwitz were approved.

(English page 105, German page 105, Exh. 1498,
Document NI-10493, Document Book 77, English p. 3/4).

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Aside from these passages, in which the defendant Gajewski is mentioned by name and is connected with occurrences which are outside the realm of his activity, the Prosecution claims here also, that all the defendants - including therefore the defendant Gajewski - are "responsible" for all events within the I.G., on the ground of the joint responsibility of all members of the Vorstand as maintained by the Prosecution, because they allegedly knew of those occurrences.

2) So far as the particular field of activity of the defendant is concerned, the Prosecution in its preliminary memorandum (English P. 27/8, German P. 27/8), referred to this in their statements regarding the plants Wolfen-Film, Kamerawerk Munich, and Kalle & Co., Wiesbaden. Reference is made there to various documentary evidence of the Prosecution.

(Exh. 1399, Document NI-11063,
" 1400, Document NI-2797;
" 1404, Document NI-3825;
" 1406, Document NI-6851;
" 1827, Document NI-4037)

all of them contained in Document Book 71 of the Prosecution.

In addition to these, a series of exhibits is contained in the Document Book 71 of the Prosecution. Finally, in cross-examination of the defendant and the witness JOERSS, additional exhibits relating to this Count were produced, referring to events in the plant Wolfen-Film and Landsberg. All these documents form the subject of the following statements:

3) In the first place, so far as the general knowledge of the defendant about the assignment of foreigners for forced labor in the plants of the I.G. is concerned, he declared under direct examination that, when foreign workers were first employed,

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in the I.G., - in particular during the first period of the war - he had no doubt that these workers had come voluntarily to Germany. He only learned later on, during the war, that in particular the Polish and Eastern workers had come to Germany against their will. As far as the so-called Western workers are concerned, who at the beginning came also came on the basis of voluntarily concluded labor-contracts, he became later aware of the introduction of compulsory labor-service in the German-occupied Western territories, in order to secure workers for Germany.

(Transcript English p.8242, German page 8315).

Under direct examination the defendant described how after the beginning of the war, the workers needed by the plant, and foreign workers especially, were assigned to the plant through the Labor Allocation Authorities, that is, foreign forced labor was not brought in through the action of the Sparte itself, or that of the I.G. The defendant stated that the labor recruiting actions for foreign workers, which are described later on, showed on a voluntary basis entirely unsatisfactory results and that as a consequence the plants had to depend on the allocation of foreign workers by the Labor Allocation Authorities. The plant Jelfen-Film had to report its requirements for workers to the competent Employment Office in Jelfen, which then allocated the workers on its own authority.

(Transcript English page 8261/62, German page 8337/38).

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This proves that the allocation of foreign workers was exclusively dealt with by the State Offices for Labor Allocation, and was therefore not subject to the influence of the plant management, in particular to that of the defendant.

The Military Tribunal No. IV in Case V against Flick and others came to the same conclusion.

(See Transcript in Case V, English Page 10986, German Page 10728)

The defendant also stated that he never knew and that he never had the impression that in connection with the recruiting of foreign workers the I.G. had shown any initiative or had participated in the forcible recruiting of foreign workers for their plants. In this connection he furthermore stated that he as well as his colleagues endeavored to keep the German permanent staff as much as possible and to recruit foreign workers on a voluntary basis. In 1939, when a serious shortage of labor became acute in the Filmfabrik Wolfen, Dr. Gajewski - at the suggestion of the Labor Office or the Regional Labor Office, started the recruiting of voluntary workers in the occupied territories and in the neighboring states who at that time were friendly with Germany, after such voluntary workers for the Filmfabrik Wolfen had already been recruited in 1938 in cooperation with the Administration for Labor Allocation in Slovakia, Bohemia, and Moravia, and in the Sudetenland.

(Transcript English Page 8243/44, German Page 8317/18)

In this connection the defendant described in his direct examination the setting up of work shops

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for the training of such workers in various European cities for the purpose of training the workers who had been recruited there to become skilled workers and of employing them with good contracts in the Filmfabrik after the conclusion of the training. This statement is confirmed by the affidavit by Riess, in which the witness describes in detail the tasks and installations of these training centers.

(Transcript English Page 8244/45, German 8318/19; also Exh. 23, Document 52, Jachno- Document Book III, Page 32.)

5) The defendant also stated that he endeavored to limit the assignment of foreign forced labor in his plant as much as possible. The reason for this was that the work in his plants had to be done very accurately, something which could not or could hardly be done by unskilled workers, especially as there were considerable difficulties in making the foreigners understand.

These efforts of the defendant at the Offices for Labor Allocation, which were aimed at the recruiting of German workers, were in practice hardly successful, since the shortage of German workers was becoming more and more obvious as a result of the draft. The strained situation on the German labor market became particularly noticeable at the Filmfabrik, as in the Central-German districts a considerable expansion of the industry had taken place, which was at the immediate service of armament and was therefore given preference in the allocation of labor.

(See Transcript English Page 8245, German Page 8320.)

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This testimony of the defendant is confirmed by the testimony of the witness JOERSS, the former manager of the Welfare Department of the Betriebsgemeinschaft Mitteldeutschland, of which the Wolfen-Film plant was a part, who stated that the plant management was doubtful in regard to the assignment of foreign workers, and that he, the witness, constantly endeavored to obtain German workers from the leading officials of the Administration for Labor Allocation, and to retain the German workers at the Filmfabrik. The witness furthermore stated that in view of the general situation on the labor market his endeavors could not be successful.

(See Transcript English Page 9495, German Page 9566.)

6) In reply to the question whether the plant management - in particular Dr. GAJEWSKI - could have rejected the foreign workers who were allocated by the Labor Office, the defendant stated in his direct examination that the production output figures which were expected from his plant were given to him by the state, and these had to be fulfilled.

(See Transcript English Page 9345/46, German Page 9320/21; also Exh. 23, Document 48, GAJEWSKI Document Book III, Page 26, Affidavit Fens KNEERL; Exh. 18, Document 48, GAJEWSKI Document Book III, Page 13, Affidavit von RESE; Exh. 19, Document 44, GAJEWSKI Document Book III, Page 17, Affidavit DUSST; Exh. 34, Document 49, GAJEWSKI Document Book III, Page 26, Affidavit RATHMANN.)

A rejection of the foreign workers assigned to him by the labor offices would inevitably have resulted in the fact that he could not have reached the given output, owing to the shortage of German workers. The result of this would have been that the defendant would have been accused of sabotage. Such acts of

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sabotage would have been most severely punished during the war, according to the regulations. In this connection the defendant stated that roughly half of the workers employed at the Wolfen-Film plant were foreigners, and that therefore the percentage of foreign workers was absolutely necessary to reach the output given by the State.

(See Transcript English Page 8246, German Page 8321.)

He also stated that the general compulsion with regard to the employment of foreign workers was in his case aggravated by the fact ^{that} he had again and again -- as already stated under Point I -- serious differences with Party authorities and also difficulties with the Gestapo. To reject foreign workers would have been particularly dangerous for him, owing to his personal circumstances.

(Transcript English Page 8247, German Page 8322.)

This was confirmed by the witness Joeses who described the difficult situation in which the defendant was and who pointed out that he could not have refused the foreign workers assigned to him by the labor offices.

(See Transcript English Page 8486/87, German Page 8567.)

In view of these circumstances which are confirmed by much evidence submitted by the other defendants, the Defense is of the opinion that the defendant Dr. Gajowski can refer to the plea of necessity in regard to the charge of having employed foreign slave labor.

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The plea of a case of necessity is a recognized justification in the criminal law of all civilized countries; the case of necessity is recognized by Anglo-American law in particular as a view-point excluding the conviction of a defendant. In this respect reference is made to the detailed explanations in the Judgment of Tribunal No. IV in Case V against Flick and others.

(See Transcript in Case V, English pages 10 992 - 10 995, German pages 10 733 - 10 736).

Tribunal No. IV there explains that the regulation of paragraph II, par. 4b) of Control Council Law No. 10, according to which, acting on order is not recognized as justification, does not deprive the defendants of the protective plea of the case of necessity. The plea of the case of necessity as a universally valid principle of law is above all regulations of criminal law.

"The law of cases of necessity is not likely to be well furnished with precise reasons; necessity creates the law, it supersedes law and whatever is reasonable and just in such cases is likewise legal."

(cf. Wharton's Criminal Law, Volume I, Chapter VII, sub-division 126). A prerequisite for the use of the plea of justification of a case of necessity is that the

/defendant when committing the act was in a position of constraint which constituted a "clear and present danger" for him personally.

Tribunal IV established in its Judgment in this connection the following words which can be described as universally valid:

"The defendants lived within the Reich. The Reich through its bodies of enforcement officials and secret police, was always "present", was ready to go into instant action and mete out savage and immediate punishment against anyone doing anything that could be construed as obstructing or hindering the carrying out of governmental

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regulations or decrees."

(see Transcript, Case V, English pages 10993/4, German pages 10735). Accordingly, various defendants in Case V were acquitted from the view-point of a state of necessity on the Count of participation in the carrying out of the slave labor program of the Nazi government. This acquittal referred not only to the employment of foreign compulsory labor, but also to the employment of prisoners of war and concentration camp detainees.

It is the opinion of the defense that, in applying the principle just quoted and the judgment of Tribunal No. IV, the defendant Gajewski can refer to the case of necessity existing in his own case in reply to the charge of employing foreign compulsory labor and concentration camp prisoners, which subject we shall go into later. For the argumentation of the Defense, has shown, as already mentioned that the foreign workers were assigned by the State Labor Allocation Authorities to the film factory Wolfen, managed by the defendant, without their co-operation and that there existed government orders (staatliche Auflagen) for the fulfilling of which the foreign labor was used.

(See on this point also the affidavit Dr. Meyer, Exh. 14, Document 10, Gajewski Document Book I, page 52.)

It has further been shown already that the defendant tried over and over again to get German labor, but was unsuccessful, owing to the situation on the labor market during the war.

From this it follows, in the opinion of the Defense, that the defendant cannot be found guilty from the view-point of participation in the carrying out of the so-called slave labor program,

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as the justification of a case of necessity must be granted to him. Wharton's "Criminal Law", volume I in a foot note to subdivision 384, chapter XIII on the basic conception of the protective assertion of the case of necessity, states as follows:

"A case of necessity is a ground of justification, as nobody can be guilty of a crime without the intention directed towards this crime. If there is irresistible psychologic compulsion the will to commit the act is absent. Lord Mansfield in Stratton's Case, 21 How.St.Tr. (Eng.) 1046-1223." (End of quotation).

7) The Prosecution further charges that the foreign workers were treated badly at the Wolfen-Film plant of the Sparte III and submitted on this point

Exh. 1402, Document XI - 11614, Doc.Book 71, English page 20, an affidavit of the Belgian worker, Jean van Mol,

in which the following assertions are made:

He had been employed at the plant Wolfen-Film and had been forced to work on 6 days of the week 10 hours a day and 12 hours on Sundays, with the exception of every fifth Sunday, when the foreign workers were on/rain precautions duty.
air

The huts where the foreigners lived were overrun with vermin. The foreigners had slept on pallets. The straw was never changed during the 27 months which he, - van Mol, - spent in Wolfen, and neither were the sacks.

The foreign workers were guarded in the camp by the camp leaders, and in the plant by members of the works police (Werkschutz), who were usually accompanied by dogs.

The food was insufficient and very bad: it in truth was fit only for feeding hogs. The meals consisted almost without exception of cabbage soup, white turnips boiled in water and 250 gram of bread a day.

It frequently occurred that the German supervisors beat the foreign workers. He, van Mol, had also seen how plant engineers had beaten workers at Wolfen, in particular the engineers Dr. Schmidt and Dr. Schneider.

The foreigners were under the constant threat

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of being sent to a penal camp. One of his French camp mates had died three days after his return from such a camp.

The medical care in the camp was entirely insufficient. Persons with a temperature of 39° were sent back to work. He, van Mol, had acquired a septicemia due to malnutrition, which had resulted in a swelling of his left arm. Though he was unable to use the arm, he had been sent back to work by the physician. He had tried in vain 5 times in 3 days to persuade the physician to examine him. Only after the work police took him to the physician on account of the condition of his arm did the latter declare that an immediate operation was necessary on the arm.

In order to refute the various points of the affidavit van Mol, the defendant's Defense Counsel introduced first

Exh. 43, Doc. 26, Gajewski Doc. Book II, page 23, viz., the affidavit of the Dipl. Ing. Kurt Riess, who was for many years, in particular during the period 1939 to 1945, chief engineer of Sparte III, with his head office in Wolfen-Pilm. In this capacity Riess had to deal with all the plants of the works and also supervised the carrying out of the construction of living camps for foreign workers. He, therefore, acquired a comprehensive idea of their treatment. The affiant emphasizes that all important questions concerning the housing and treatment of foreign workers were the subject of many discussions within the management, in which he participated. He was therefore in a position to make the following statements on the various points of the affidavit, van Mol:

Working hours: The regular working time was 8 hours daily, and no work at all was performed on Sundays. Foreign workers were only called upon in exceptional cases to serve on air raid duty. There could therefore be no question of regular service by foreigners on every fifth Sunday for this purpose.

Accommodation of the foreign workers: The barracks in which the foreign workers lived were as well built as ever possible. The works-manager,

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* / said

Dr. Gajewski, laid the greatest importance on the foreign workers being given the best treatment possible under the circumstances prevailing at that time, and that no expenses should be spared for this purpose. That the beds were mostly equipped with straw sacks is true, but that they were not changed does not accord with the facts of my own observation. I have often seen myself, how the paillasses were emptied and freshly filled.'

There could be no question of the foreigners being guarded by the camp leaders. It was primary duty of the latter to keep the camp clean and to procure the food. For every 3-400 foreigners there was one camp leader. Only at every entrance and exit of the camp there was a gate-keeper as was also the case at the factory. Neither was there any watching of foreign workers by the plant police in the factory. The plant police only guarded the entrances and exits of the factory. There were only about 50 - 60 works police including the gate guards for approximately 13,000 workers of the factory (foreigners and Germans).

The food of the foreigners was the same as that of the German workers. The foreigners who were not heavy workers and therefore received normal rations, were even better off with the camp food than the German workers.

The affiant Riess considers it out of the question that foreign workers were repeatedly beaten by foremen and master workmen. The works management on every occasion insisted on the decent treatment of foreign workers. He had never heard of complaints in this direction on the part of the stewards or representatives of the foreign workers. He remembers one case only, where a Polish woman was beaten by a German superior. This case was immediately reported, whereupon the works manager, Dr. Gajewski, personally reprimanded and warned the German superior in the sharpest manner. There were no factory engineers by the name of Dr. Schmidt and Dr. Schneider in the film factory.

The film factory had no punishment camp and no punishment teams to which foreign workers who did not want to work were assigned. There was indeed an order by the Plenipotentiary for the Allocation of Labor which made it compulsory for the Betriebsfuehrer to report foreign workers who were repeatedly absent from work or left their jobs without authorization, in cases where all reprimands and warnings had proved futile. The decision as to whether such loafers should be transferred to a labor camp was made by the Gestapo alone, under whose command these correctional labor camps were operated.

In regard to the medical treatment of the foreign workers there were never to his knowledge any other standards applied than those in use for the German workers.

These basic statements of the affiant Riess are confirmed in all points by the extensive additional evidence and the depositions of the defendant.

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In the course of direct examination, the defendant expressed profound indignation at the statement made by van WOL, which he described as utterly untrue.

In particular, he stated

that the accommodation provided for the foreign workers in the hutsments had been decent and that rations had been generous, judged by present day standards. The medical treatment had been excellent. The works had its own large general hospital, provided with all the most modern equipment. The facilities offered by this hospital were available to all foreign workers just as to the Germans. In addition, there had been various other medical centers in the works, including, for example, a maternity home which was ^{in the} throughout the district. Furthermore the defendant categorically denied the alleged maltreatment of which the deponent speaks. As far as anything else is concerned the camp had been inspected at regular intervals by the Industrial Inspection authorities.

The best proof of the good conditions which prevailed in the foreign workers' camp attached to the Wolfen Film factory, he states, was the fact that, following the introduction of conscription in France, Frenchmen who knew the "Agfa" immediately volunteered for work in the Wolfen-Film factory; a further proof is the circumstance that after the collapse, not a single camp official, foreman or overseer, chemist, engineer, member of the factory police or even the defendant himself suffered even the slightest injury at the hands of the thousands of foreign workers. The foreigners would assuredly have avenged themselves if the conditions in the camp, in fact, been as the deponent described them.

(c.f.p. 825 - 70 of the English Court Transcript, 8343 - 47 of the German)

Among the evidence submitted by Counsel for the Defense of this defendant, there appears, first of all, an affidavit by Dr. HILGHELD, plant doctor of Wolfen, which discusses in detail the medical treatment available to the foreign workers.

(Exh. 42, Document 37, GAJEWSKI Document Book II, p. 30)

The deponent states,

that both the work doctors and the medical equipment were at the disposal of foreign workers and Germans alike, and that the same standards were set in the maintenance of a high standard of health among the foreign workers and prisoners of war as those applied to the German workers. Moreover, he states, foreign workers who were not in-patients of the hospital were given opportunity to choose their own doctors. To quote the words of the deponent:

"The general standard of health among the foreign workers was extraordinarily high. Accordingly, the death rate was very low. During the years 1941-1945, the number of deaths in the Wolfen area scarcely exceeded ten, the maximum figure being 15."

(Exh. 42, Document 27, GAJEWSKI Document Book II, p. 32)

Thus the assertions contained in the affidavit by van MOL on the allegedly inadequate medical treatment available to foreign workers are conclusively refuted. In this connection, van MOL's medical record card, appended to the affidavit by Dr. WILGENFELD, is particularly not worthy.

(GAJEWSKI Document Book II, p. 34)

It can be seen from this medical record card that van MOL was entered unfit for work over a period of 6 days in September 1944 on account of treatment which he was receiving for an under-arm boil. Furthermore, it can be seen from the medical record card that van MOL repeatedly received treatment and on many occasions was declared unfit for work.

For the express purpose of refuting van MOL's assertion that Drs. SCHMIDT and SCHNEIDER, the factory engineers, struck the workers, the Defense has introduced an affidavit by Dr. SCHNEIDER, Chemist.

(Exh. 44, Document 28, GAJEWSKI Document Book II, p. 35)

He states

that no engineer of his name ever worked at Wolfen, and that, as Chief of several independent research laboratories, he himself had not come into direct contact with the workers. He particularly stresses the fact that he never struck a foreign worker.

In addition, the Defense has submitted an affidavit by Dr. SCHMIDT, Chief of the Wolfen artificial silk plant.

(Exh. 25, Document 29, GAJEWSKI Document Book II, p. 37)

Dr. SCHMIDT states

that at that time, there was no engineer of the name of SCHMIDT at Wolfen and that he himself never struck a foreign worker, more especially since he never came into close contact with the foreign workers.

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Attention is then drawn to the affidavit by Dr. SCHULZE, Chief of the Personnel Department of the film factory.

(Exh. 56, Document 59, GAJEWSKI Document Book IV, p. 13)

The deponent describes the statement made by van MOL on working hours as inaccurate.

(GAJEWSKI Document Book IV p. 28)

He draws attention to enclosure 5) of his affidavit, which contains a list drawn up by the Wage Office on the subject of hours worked by van MOL each month in the years 1943/44/45. This shows an average of 54 hours per week, which equals an average of nine hours' work per day, six days per week.

Thus every point of van MOL's affidavit is refuted and, in the opinion of the Defense, the affidavit is proved invalid from the point of view of evidence. That the foreign workers were well treated at Wolfen is proved by still further evidence.

In the first place, let me mention the interrogation of the witness JOESS who, from February 1937 to March 1943, was Chief of the Social Welfare Department for the plant community of Berlin to which the Wolfen Film factory belonged, and the Central German plant community.

(c.f.p. 8481 ff of the English Court Transcript, 8560 ff. of the German)

In addition to stating that the foreign workers - as already mentioned - were allocated to the film factory by the Labor Allocation Offices, the witness describes in detail in the course of the interrogation the treatment meted out to the foreign workers.

(c.f.p. 8498 ff of the English Court Transcript, 8569 ff. of the German).

He states that the foreign workers worked on a basis of equality with the Germans from the point of view of working conditions and that the work which they performed, the

treatment which they received, their wages, accommodation and the general provisions for their welfare were identical with those of the Germans. The Betriebsrat had no influence whatsoever on the formulation of certain restrictive legal provisions governing the payment and treatment of Polish workers. The defendant could not have ignored these regulations, more especially since his premises were regularly and frequently inspected by the State "Labor Trustees".

The witness describes the "Marie" camp erected in Bitterfeld, in which, in the early stages, the foreign workers of the Wolfen Film factory were also accommodated, as a model camp, in which German workers lived together with the foreigners. It was precisely this circumstance which had been the cause of a clash between the witness and Dr. LBY, leader of the "German Labor Front" on the occasion of an inspection of the camp.

(c.f.p. 8491 of the English Court Transcript, p. 8571 of the German).

In addition, he describes the equipment of the huts, etc.,

(c.f.p. 8492/93 of the English Court Transcript, p. 8572/73 of the German)

the rations issued to the foreign workers,

(c.f.p. 8493 of the English Court Transcript, p. 8573 of the German).

and the regular inspections of the camp and the camp kitchens carried out by him, raising the point that the defendant himself frequently assumed himself of the correctness of the treatment meted out to the foreign workers in the camp by means of frequent surprise inspections of the camp.

(c.f.p. 8494 of the English Court Transcript, p. 8574 of the German).

The witness then proceeds to a statement on the medical treatment available to the foreign workers and the medical installations in the Wolfen works,

(c.f.p. 8495 of the English Court Transcript, p. 8576 of the German)

on the standard of health among the foreign workers and the sickness statistics, from which it can be seen that the percentage of workers incapacitated by sickness varied between 1.8% and 4% of the whole, while the average among the German population was 3.8% and at times, considerably higher.

(c.f.p. 8496 of the English Court Transcript, p. 8577 of the German).

The witness is not aware that foreign workers were ever maltreated in the Wolfen Film factory. He would most certainly have heard of any such occurrences, had they taken place, as the foreign workers had their own men of confidence with whom the witness maintained constant contact.

(c.f.p. 8496/97 of the English Court Transcript, p. 8578/79 of the German).

Finally, the witness described in detail the measures taken by the Film factory to promote the cultural welfare of the foreign workers.

(c.f.p. 8502 of the English Court Transcript, p. 8583 of the German)

To reinforce this statement made by the witness JOEBSS, permit me to point out a few statements made by foreign workers who themselves were formerly employed at Wolfen.

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First let me mention the affidavit by the Dutchman Adrian SCHOLVERS who worked in the Wolfen Film factory from July 1943 to March 1945, and who made the following statement, I quote:

"To my great joy, I found that the treatment meted out to me was humane and gave no cause for complaint. I was not the only one of whom this was true, either, as quite a number of foreigners besides myself were working in the same laboratory."

(c.f. Exh. 37, Document 17, GAJEWSKI Document Book I, p. 80)

May I mention also the letter of 2 February 1947 written by Kees Golodits, a former Dutch worker employed as a foreign worker in the Wolfen Film factory, to his former chief, foreman MALLY, and that of 17 February 1947 written by Frau RACHEL SYX, a former Belgian worker employed in the Wolfen Film factory, to her former Chief Herr TEICHMANN.

(Exh. 58, Document 61, GAJEWSKI Document Book IV, p. 31)

(Exh. 59, Document 62, GAJEWSKI Document Book IV, p. 33)

Even if the above documents are not statements deposed on oath, these letters from former foreign workers to their former German Chiefs at Wolfen serve, in the opinion of the Defense, to give valuable support to the Defense's point of view, as these letters obviously have no connection whatsoever with the present proceedings but represent the spontaneous expression of the opinions of the foreign workers concerned. In the opinion of the Defense, therefore, these letters have the same value from the point of view of evidence as an affidavit. Both letters show that the foreign workers concerned were well treated at Wolfen. Had this not been the case, the sincerity with which the letters are written would be incomprehensible. The following paragraph from the letter written by Frau Rachel SYX is particularly significant in this connection:

"And now, dear Herr Teichmann, I should like to reiterate my heartfelt thanks for the good and kindly treatment which I received at your hands during the period in which I worked for you. I have none but pleasant memories of that time. I think often of the filter machine shop and of all my fellow workers there."

(Exh. 59, Document 62, GAJEWSKI Document Book IV, p 33).

The report of the present Filmfabrik Agfa Wolfen, Department of the Sowjetische Aktiengesellschaft Photofilm, dated 9 February 1948, on the employment and treatment of foreign workers at the Filmfabrik Wolfen is of special evidential value.

(Exh. 55, Document 58, Gajewski Document Book IV, Page 1)

It was made by the present Chief of the Filmfabrik Agfa Wolfen, Department of the Sowjetische Aktiengesellschaft Photofilm, Dr. Esselmann, and the Chief of the Social Welfare Department, Dr. Schulze, and was countersigned, - particular note should be taken of this -, by the present shop steward, i.e. the workers' representative. If the Chief of a Soviet Aktiengesellschaft reports on the treatment of foreign workers in this plant under the Nazi-Regime, and that report is countersigned by the workers' representative any coloring of the report seems to be out of the question.

The two signatories of the report were at the Filmfabrik Wolfen even during the war; Dr. Esselmann in his capacity as manager of the spun rayon and artificial silk plant, and Dr. Schulze in his capacity as Chief of the Personnel and Welfare Department.

The report starts by stating ^{that} no influence was exerted by the Filmfabrik on the allocation of Germans and foreigners, but that the foreign workers were allocated by the State. The report also shows that on the instructions of the management of the Filmfabrik everything was done to promote the well-being of the foreign workers and to increase their keenness to work. On principle no distinction was made between the treatment of foreign and German workers. The plant management did not know of any instance where the foreign workers were treated worse than the Germans. Even after Wolfen was occupied by the Americans no complaints were voiced.

The description of the above mentioned report is supplemented by the affidavit of Dr. Schulze, who also signed the above report.

(Exh. 56, Document 59, Gajewski Document Book IV, Page 13)

This affidavit contains a particularly detailed description of the allocation; working and living conditions of the foreign workers at Wolfen, as well as of the efforts by the plant management in regard to the welfare of the foreign workers. The following paragraph, quoted from this affidavit, is particularly significant of the defendant's attitude in regard to the question of the welfare of the foreign workers:

"Orders were often issued by the plant administration, especially by Dr. Gajewski, the execution of which

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he considered necessary for the improvement of quarters, clothing and food for the foreign workers. In order to accomplish this, he frequently visited the individual camps, at times alone, at others with myself or with gentlemen from the technical departments responsible for construction."

(Gajowski Document Book Page 19)

In this connection reference is also made to the appendices

to this affidavit. They contain a table showing the number of foreign workers at Wolfen from 1940 to 1944; a number of photos taken in the camps of the Filmfabrik Wolfen, plans for a hut for foreign workers, a plan showing the lay-out of Camp I, also a list showing the food allocation to Germans and foreigners during the period of 8 January 1945 to 9 February 1945.

To complete this picture the following exhibits, introduced by the Defense, are quoted. These throw light on the social attitude of the defendant in all questions concerning the treatment and care of foreign workers:

Affidavit of Dr. Hans Porschmann, who succeeded the witness Joeres in his capacity as Welfare Referent of the Works Comrades Berlin and Central Germany.

(Exh. 30, Document 13, Gajowski Document Book I, Page 62.)

Affidavit of Gustav Adolf von Bock, former Chief of the Welfare Department of the Landsberg Plant of Sparte III.

(Exh. 33, Document 14, Gajowski Document Book I, Page 67.)

Affidavit of Dr. Josef Huber, former Chief of the Aosta Plant of the I.G. in Berlin-Lichtenberg, which belonged to Sparte III.

(Exh. 34, Document 21, Gajowski Document Book II, Page 1.)

These affidavits all say that the defendant always endeavored to do everything he could to improve the position of the foreign workers, and that he repeatedly gave instructions to the effect that, regardless of cost, the foreign workers should be fed and cared for as well as was possible under the circumstances.

The above mentioned affidavits are made by former associates from three different plants of Sparte III, and therefore give a comprehensive picture of the defendant's attitude to the question of the treatment

and care of the foreign workers.

Reference is also made to the affidavit of Oskar Hessel, who made a film at Wolfen in 1942 on the life, accommodation, and recreation facilities of the foreign workers.

(Exh. 36, Document 16, Gajowski Document Book I, Page 75.)

This affidavit is particularly valuable, because it was made by a man, who, for the purpose of making this film, lived in the camp during the summer and winter, who took his meals there and was therefore able to watch the life and the activities of the foreign workers very closely. The affiant describes in full detail, the exemplary installations which he found in the camp, and he closes his statement with the sentence:

"They were without exception in good humor. I was much impressed by the success achieved in creating and maintaining an atmosphere of harmony and contentment within the camp. This was obviously due to the great attention which had been given to the various national customs, and which I had had occasion to observe".

(Gajowski Document Book I, Page 79.)

The Defense also submitted to the Commander of the American Occupational Forces at Bitterfeld a report on the accommodation and food of the foreign workers in the camps of the Filmfabrik Wolfen.

(Exh. 38, Document 20, Gajowski Doc. Book I, Page 98.)

The photostat copy of this report which was authenticated by the affidavit of Dr. Harald Mediger (Exh. 39, Document 24, Gajowski Document Book II, Page 19) contains exact information on the number of beds, the foreigners' food rations in comparison with those of the German civilian population, and on the food stocks in the camp which were at that time still available.

Reference is also made to the affidavit of the Architect Leonhard Reeck, who was Chief of the Building Department of the Filmfabrik Wolfen until 1945, and who was responsible for the construction of the huts for the foreign workers.

(Exh. 40, Document 22, Gajowski Document Book II, Page 4.)

The witness describes in full detail the construction of the camps, as well as the kind of huts and their equipment.

The camps were equipped according to the same standards as that fixed for German workers.

In this connection special value must be attached to the affidavit of Dipl. Ing. HIESSE, (engineer).

(Exh. 41, Doc. 23, GAJEWSKI Doc. Book II, page 13)

The affidavit made out a statement showing the costs for erecting billets for foreign workers from 1940 to the beginning of 1945 within the factories of Sparte III, and arrived at a round total of 13 million RM. In this connection the Wolfen Film Factory shows for instance an average expenditure of about RM 1600,— per worker for accommodation alone. To this must be added the considerable expenditure for regular care, board, clothes, and leisure time arrangements, etc..

Here mention should also be made of the plans and lay-outs for the construction of the foreign labor camps of the film factory.

(Exh. 72, GAJEWSKI Doc. Book IV, page 41)

Finally, the Defense desires to draw Your Honours' attention particularly to the affidavit of the former Roman Catholic priest, Stephanus RUPPERTS of the parish of Wolfen.

(Exh. 35, Doc. 15, GAJEWSKI Doc. Book I, page 70)

In the opinion of the Defense his statements are of special value because, as spiritual adviser, he had frequently an opportunity of talking to foreign workers face to face, and if they had been badly treated the persons concerned would undoubtedly have told him of their complaints. The affidavit concludes by the following words:

"I have the impression that the Filmfabrik did everything possible. To give an example: As soon as a batch of several hundreds of Polish girls arrived, the Filmfabrik informed the Pastorate and asked to be notified as to the hours of the church service. Later on, by order of the Political Police, only one church service could be held every four weeks. But the Filmfabrik did not have anything to do with such measures. The same was also true of other fields. The plant management of the Filmfabrik, beyond all doubt, did everything in order to ensure that the foreign workers could live as human beings and were treated as such. (GAJEWSKI Doc. Book I, page 73/74, underlined by ourselves.)

Summary. After weighing the above evidence the result shown is that the treatment of the foreign workers in the Wolfen Film Factory, as well as in other factories of Sparte III, was beyond reproach, and that no blame, attaches to the defendant in this respect.

B) Let us now deal briefly with a specific chapter to which ^{the} Prosecution has repeatedly referred in the course of this trial viz. the punitive measures against unwilling workers and especially their assignment to so-called corrective labor camps.

In this connection, during the cross-examination of the witness JOEISS, the Prosecution cited excerpts from the minutes of the directors' conferences of the Wolfen Film Factory.

(See Transcript, English page 8534, German page 8605;
as well as Exh. 1968, Doc. XI-13 584).

These excerpts of minutes contained references to several cases of unwilling workers being sent to corrective labor camps, or taken into protective custody, or reported to the Gestapo. With reference to these minutes, the witness JOEISS stated in his re-examination that it is not clear from the way they were drawn up that foreign workers were concerned in the cases in question. On the contrary, whoever "factory staff members" (Gefolgchaftsmitglieder) were mentioned, this could only mean German workers, as, according to the Nazi terminology, this expression was never applied to foreign workers.

(Transcript English page 8532, and following pages, German page 8613 and following pages)

The witness JOEISS, in his direct interrogation, made a statement on the subject of working discipline.

(Transcript, English pages 8499-8502, German pages 8580-8583).

He described the difficulties of this nature which arose from so many members of different nationalities living together. He pointed out that even among the foreign workers there were downright slackers who constantly tried to shirk work. At first so-called internal measures, which varied from a warning to a fine, were taken against them. The

Disciplinary action involved not only foreigners, but also German workers, and was based on the legal provisions applying at that time and on the regulations established for the plant.

The witness further stated that if the internal measures were not successful the existing regulations obliged the factory management to report deliberate slackers. They were also obliged to report deserters from work. There was no corrective labor camp in Wolfen. The witness did know, however, that slackers who had been reported to the Labor Office, were in several cases sent to corrective labor camps at other places. It was the Reich Labor Trustee, however, who ordered these steps to be taken. The explanations given by the witness JOERSE were confirmed by the defendant in his direct interrogation.

(Transcript, English pages 8275-8281, German pages 8355-8360).

The defendant refers specially to the awkward situation in which the plant found itself when confronted with these slackers. He was responsible for seeing that the compulsory production figures were reached, and therefore, had to insist on the strict maintenance of the work's discipline. On the one hand, owing to the provisions ruling at that time he could not discharge persons unwilling to work, for the Labor Office would never have given its approval. On the other hand, in view of the extraordinarily difficult situation of the labor market the Labor Office would not have provided replacements. In these circumstances, according to the legal provisions, the factory management had, in cases of habitual slackers, with whom all other disciplinary measures were of no avail, to make a report to the authorities, who then took all further steps themselves.

This explanation is confirmed by the affidavit of Max GEMISCH, who from 1941 until the end of the war looked after the foreign workers and was at the head of the foreigners' camps of the firm KALLB & Co., affiliated to Sparte III.

(Exh. 53, Doc. 33, GAJEWSKI Doc. Book II, page 46.)

The affiant refers to Exh. 1824 (NI-4035), Exh. 1826 (NI-4035), Exh. 1827 (NI-4137), and Exh. (NI-5187), all in volume 71 of the Prosecution on page 40 - 59. All these documents refer to measures taken against French workers, male or female, for using go-slow methods. The affiant declared that in all three cases female workers were involved, with whom all exhortations on the part of the plant had failed, and so great was the danger of their exerting a bad influence on their fellow-workers that

corrective action was the only means of securing them to order. The affiant confirmed that in such cases one was obliged by law to interfere or make a report.

As regards Exh. 1825 (Doc. NI-4034) in Doc. Book 71, page 42 which has no direct bearing on this matter, the affiant states that it dealt for the most part with the ordinary routine information from the Reich labor regulations prescribed by law; there was no special reason for giving the information in question.

(Further on it will be shown that the defendant had nothing at all to do with the handling of the labor regulations or of social welfare matters by KALLS & Co.)

In connection with the question of disciplinary action, the Prosecution has introduced a circular letter by Dr. PERSCHMANN (Consultant for Social Welfare Questions at the Berlin Works Combine) concerning the admissibility of cutting the rations of the Eastern Workers when they broke their contracts.

(Exh. 1399, Doc. NI-11063, Doc. Book 71, page 1)

In this connection the Defense Counsel for the defendant produced an affidavit by Dr. PERSCHMANN.

Exh. XI, Doc. 25, GAJEWSKI Doc. Book II, page 21 .

Dr. PERSCHMANN declares that there is no justification for concluding from this letter that the I.G. entertained doubts about the admissibility of such measures, and therefore, the information in this letter had its origin in an enquiry from the I.G.. The contents of this letter, also show that it was merely a question of passing on information given by the Reich Group Industry in line with the regular policy of keeping the plants of the Berlin Works Combine and Central Germany informed about legal aspects of employment.

Summary: The evidence produced by the Defense shows that measures for maintaining working discipline, such as warnings, fines, and more especially reports to the authorities, were prescribed by law, but that in reality, such reports were made only if repeated warnings

or a fine imposed by the plant were of no avail. In any case in not one specific case could the Prosecution prove that such measures were applied in the Wolfen Film Factory, or indeed in any other plants of Sparte III. Therefore, no blame can be attached to the defendant GAJEWSKI in this connection.

9) During the discussion of the disciplinary measures incidents were mentioned which occurred outside the Wolfen Factory.

To prove its argument the Prosecution cited certain incidents in the Munich Camera Works of Sparte III.

(Compare page 27 of the Prosecution's preliminary statement).

Thus the fundamental question arises as to whether, and if so, to what extent, the defendant can be held responsible for things which occurred in the field of social welfare outside the Wolfen Film Factory.

Here the Prosecution starts from an exaggerated conception of the "responsibility" of the individual Vorstand members.

On page 20 of its preliminary statement regarding part III, it refers to the so-called Plant Leaders' Conferences, which were convened by the defendant SCHNEIDER about every three months, and in which also the defendant Dr. GAJEWSKI participated among others.

It also mentions the conferences of the so-called "Unternachmannschaft" which consisted of the Plant Leaders and representatives of the plant staffs. In these conferences social welfare questions were discussed and experience exchanged.

(Exh. 1329, Doc. No. NI-6849, Doc. BOOK 68, English page 90)

The Prosecution contends that the "responsibility" of the Vorstand consisted in part in taking care of all the foreign workers employed by I.G.

This thesis shows a complete misunderstanding of the actual conditions and of the laws then prevailing in Germany concerning the responsibility of a manager of a plant for the social welfare of his workers.

As the witness Jcerse stated in his direct examination, the works of the Berlin Works Combine (Betriebsgemeinschaft Berlin), to which all plants of Sparte III belonged, were independent as far as the social policy in their plants was concerned. The local works manager, in his capacity as "Betriebsfuehrer", was responsible for questions of local assignment of workers, as well as for the direct social welfare of the workers, and was assisted by the Workers' Representatives Committee (Vertrauensrat). For this purpose, the works had their own social departments, or social offices, which were directly subordinate to the works managers in their capacity as "Betriebsfuehrer". This corresponded to the provisions of the "Law for the Regulation of National Labor" (AOG) which expressly states that the "Fuehrer of the Betrieb" will be responsible for the social welfare of the workers.

(Transcript, English text p. 8483/84, German text p. 8562/63)

The function of the witness Jcerse, as head of the Social Department of the Berlin Works Combine, was limited to the forwarding of fundamental social-political regulations to the various works of the Berlin Works Combine, with the exception of the Wolfen works, which were directly cared for in social questions by himself.

The defendant was the head and consequently the "Betriebsfuehrer" of the Wolfen Film Works only and therefore had the final responsibility for the social care of the workers employed at this plant. It corresponds neither with the real conditions and the actual procedure, nor with the laws then in effect, for the Prosecution also

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to charge him with the responsibility for happenings which occurred in other works of his Sparte and in the other Spartes.

The participation of the defendant in the "Betriebsfuehrer conferences" and in the meetings of the "Enterprise Advisory Board" (Unternehmensbeirat) does not justify the point of view of the Prosecution. In these meetings, only fundamental questions of social welfare were discussed and experimental data in this field exchanged. On these occasions, special occurrences falling into the sphere of social welfare work within the various plants were not discussed at all. Lack of time alone did not permit such discussions because meetings took place only approximately once every three months. The Prosecution itself states in its Preliminary Brief, Part III, page 21:

" The Betriebsfuehrer conferences and the meetings of the Enterprise Advisory Board were concerned with 'social problems which were of interest to all plants'".

Otherwise, both bodies acted only in an advisory capacity.

(Cf. Exhibit 1329 already quoted).

The point of view adopted by the Prosecution in this connection is therefore incorrect in legal and factual respects.

The peculiarity in the structure of the Berlin Works Combine, in which the works of Sparte III were united, may be pointed out here, for the sake of completeness.

Contrary to other works combines within the I.G., which combined the works of a certain district, the plants belonging to the Berlin Works Combine were scattered all over Germany. It included, apart from the Wolfen Film Works where the defendant had his office, the
Aceta Works (Berlin-Lichtenberg)
Prennitz Works (west of Berlin),
Landsberg/Warthe Works (in Eastern Germany),
Munich Camera Works,
Bebingen Rayon Factory (Bavaria),
and the Rottweil Rayon Factory (Wurtemberg).

From the mere fact that the various works of the Sparte were at a considerable distance from the defendant's office in Wolfen, it appears that it was impossible for him to take care of all the details of labor allocation and social welfare of the workers in these plants, not to mention the works of the other Spartes. In view of the fact that the defendant's energy was completely taken up by his work as technical manager of Sparte III

and as manager of the large Wulfen Film Works, with its approximately 12,000 employees and workers, he could fulfil his task of looking after the Sparte works only by placing men in charge who were well qualified and who had proved reliable during many years of service with the firm and who had gained Dr. Gajewski's confidence by their technical qualifications and their character.

It necessarily follows that the defendant did not know of individual occurrences in other works, and for this reason alone he cannot be held responsible for them.

(In this connection see the testimony of the defendant, Transcript, English text, p.8286, German text, page 8365).

In this connection, the following statements in the Judgment of the Military Tribunal IV, Case 5, versus Flick et al. are of special interest:

" We must conclude that the cruel and atrocious practices which are known to have characterized the slave labor program in many places where it was employed did not prevail in the plants and establishments under the control of the defendants. Isolated instances of illtreatment or neglect shown by the evidence were not the result of a policy of the plant managements but were indirect opposition to it..... It clearly appears that the duties of defendants as members of the governing boards of various companies in the Flick Konzern required their presence most of the time in the general offices of the Konzern at Berlin. Thus they were generally quite far removed from day-to-day administration and conduct of such plants and labor conditions therein. It is equally clear, however, that the defendants authorized and caused to be carried out measures conducive to humane treatment and good working conditions for all laborers in their plants."

(See Transcript of Case V, English text, p. 10,990).

Both of these statements can be applied literally also in the case of the defendant Gajewski, both in respect to the treatment of foreign workers employed in the Wulfen Film Works, which were managed by him, as well as to his relationship to the other works of his Sparte, and in particular to other works of the I.G.

This will clarify the standpoint of the Defense that the occurrences in the Munich Camera Works and in the firm of Kalle & Co., mentioned in the Preliminary Brief of the Prosecution, Part III, pp.27/28, are irrelevant for the reason alone that the Prosecution did not prove that they had come to the defendant's knowledge at all.

(See in this connection also the testimony of the defendant, Transcript, English text, Pages 8282/83 and 8285/86; German text Pages 8361/62 and 8364/65.)

However, in order to give a true statement of the facts, the Defense has introduced a number of exhibits to disprove the assertions of the Prosecution.

The Prosecution exhibits concerning the firm of Kalle & Co. have already been dealt with.

Apart from that, Dr. Maus, Director and at present, by nomination of the U.S. Control Office, manager of the firm of Kalle, stated in an affidavit that, according to the law, the Betriebsführer of Kalle, or its Vorstand, was responsible to the labor allocation authorities for all matters connected with the allocation and welfare of German and foreign workers, and that co-operation with Sparte III of I.G. did not take place in regard to the special occurrences at Kalle in connection with the labor allocation and social problems.

(See Exhibit 52, Document 32, Gajowski Document Book II, Page 45.)

It was only a matter of adopting I.G.'s procedure in regard to fundamental social questions, such as the payment of annual bonuses or the extension of the employees' relief fund (Gefolgschaftshilfe).

(See Gajowski Document Book II, Pages 45/46.)

The correctness of this statement made by Dr. Maus is also confirmed by the exhibits of the Prosecution

Exh. 1622, Document NI-1453,

" 1623, Document NI-12739.

(Document Book 7, Pages 39b - 39 and following Pages.)

In regard to the Munich Camera Works, the Prosecution states, in the first place, that, at the instigation of the management, twelve Polish female convicts who were assigned to them for work, were compulsorily detained there after the expiration of their sentence, in order to retain their labor for the Camera Works.

(See the Preliminary Brief of the Prosecution, Part III, Page 27, and Exh. 1404, Document NI-3625, Document Book 71, English text, Page 28, German text, Page 31.)

From the affidavit of the former manager of the Camera Works, Dr. Lingg, it can be seen that the Polish women in question had expressed the desire to continue their work at the Camera Works, which, however, in accordance with a decree of the appropriate Armed Forces Command, could only take place by their undertaking a so-called work-obligation (Dienstverpflichtung) through the Labor Office, as was entirely customary in Germany during the war. The Polish women were properly discharged from prison after the expiry of their sentence.

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(Exh. 46, Document 34, Gajowski Document Book II, Page 53.)

The same is also stated in the Affidavit of Georg Rottner, who, at the time in question, was supervisor (Obermeister) in the department of the Camera Works where these convicts were employed.

(Exh. 47, Document 35, Gajowski Document Book II, Page 57.)

The Prosecution also mentioned, in connection with the Munich Camera Works, the employment of female prisoners from the Ravensbrueck Concentration Camp, which was under the administration of the Dachau Concentration Camp.

It can be seen from the affidavits of Dr. Lingg and his co-workers, Oberingenieur Ziegler and Ingenieur Sachs, introduced by the Defense, that these prisoners had been allocated to the Camera Works by the Special Committee II VIII in charge of the manufacture of detonators, without any intervention on his part, because the production of the Camera Works was endangered, owing to the removal of convicts by the judicial administration. The management of the Camera Works, which was responsible for the fulfillment of the production orders, could not disregard the order of this Special Committee. It had no other choice but to employ prisoners. In this connection, reference is made here to the previous statements made in this question, particularly in regard to the state of emergency.

Therefore, when the affiants, Ziegler and Sachs, visited the Ravensbrueck Concentration Camp, they did not do it on the initiative of the Camera Works, for the purpose of obtaining workers from this camp. On the contrary, the purpose of the visit was merely the giving of qualification tests, as was customary in the Camera Works after it had been found that the first prisoners who were sent to Munich did not have the necessary qualifications for mechanical precision work, namely, good eyes, a steady hand and a technical understanding.

(See Exh. 48, Document 36, Document Book II, Page 58,
" 49, Document 37, Document Book II, Page 59,
" 50, Document 38, Document Book II, Page 61.)

In this connection, reference may be made to the photographs which show the Polish convicts together with German workers at work, as well as their accommodation, and the exemplary accommodation for the prisoners from Camp Ravensbrueck.

(See Exh. 60-71, Document 63 - 74, Gajowski Document Book IV, Pages 35-40a.)

The Prosecution therefore did not attempt to present any evidence of bad treatment of these workers.

Moreover, it is evident from the affidavit of Dr. Lingg of 17 February 1940 that the defendant did not know of the incident concerning the Polish convicts.

(Exh. 46, Document 34, Gajowski Document Book II, Page 54.)

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10) In connection with the employment of concentration camp inmates, we must now mention the employment in the Wolfen Film factory of female prisoners from the Ravensbrueck camp. The Prosecution has submitted a document on the settlement of accounts in respect of the hours worked by the prisoners, from which nothing more can be seen than the fact that they worked at Wolfen.

(Exh. 1401, Doc. -III-4190, Document Book 71, Page 13 of English, 15 of German).

The Prosecution has not made the assertion that these prisoners were badly treated in the Film factory.

During his interrogation, the witness made the following statement on the subject:

(c.f. p. 8250-8253 of the English Court Transcript, p. 8325-8328 of the German).

In the year 1943 - the defendant no longer remembered the exact date - a high ranking officer of the SS, sent by the Camp Administrative Authorities of the Ravensbrueck camp, presented himself at the factory in order to discuss the possibility of employing prisoners in the Film factory. The visit was obviously the result of information received by the Camp Administration from the labor allocation authorities on the manpower shortage. Up to this time, the Works Management had never had any contact with the Ravensbrueck camp. The Officer having ascertained in the course of his inspection that it would be possible to employ prisoners in the Film factory in compact groups as prescribed by the SS, prisoners were allocated accordingly. It was in this year, 1943, following the Stalingrad catastrophe, that orders were issued by the State to the effect that all available resources in industry were to be exploited to the full. As the Film factory had insufficient workers to enable it to fulfil the production program, any refusal on the part of the defendant to employ prisoners would doubtless have been construed as sabotage and would have exposed him to the gravest consequences. The earlier statements on the emergency situation existing throughout German industry and the emergency situation in which the defendant in particular found himself, should be mentioned again here.

The Wolfen Film factory Report confirms the facts revealed by the defendant on the circumstances which led to the employment of prisoners, in the statement:

"The concentration camp inmates were not offered by the Labor Office, but were allocated to the Works by the Management of the Ravensbrueck camp."

(c.f. Exh. 45, Document 58, Gajewski Document Book IV, p. 58/59).

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The witness Dr. Perechmann states in his affidavit that the defendant had been particularly averse to the employment of the concentration camp inmates and would much have preferred to avoid employing them had this been at all possible. It was purely in view of the shortage of labor that he did not refuse to employ them. Dr. Perechmann mentions in addition that the circumstance that the Works Management had no responsibility for the care or supervision of the prisoners, played an important part, but the defendant stated in the course of the interrogation that he would have been compelled to refuse to take responsibility for the escape from the premises of prisoners, among whom there were, naturally enough, criminal elements.

(c.f. p. 8258 of the English Court Transcript, p. 8334 of the German).

As to any other questions, the defendant informed the Court that the work performed by the prisoners was easy, and that when he himself had sought information on the subject, he had learnt that the prisoners were satisfied with this work in every respect and considered it a privilege to be allowed to work at Wolfen instead of living in the Ravensbrueck camp. He had seen them at work when making his rounds of the plants. His impression of these people had been that they were, in general, in good health and reasonably well fed.

(c.f. p. 8253-55 of the English Court Transcript, p. 8328-30 of the German).

This is confirmed in the affidavit by Dipl. Ing. Koegelinger who made, among others, the following detailed statement on the working conditions of the prisoners and the accommodation provided for them, I quote:

"On the whole, I had the impression that the prisoners performed this work gladly - apart from the dental suffering which naturally resulted from the fact that they were prisoners. I view as a confirmation of this statement the fact that, some time after her official departure from the plant, one of the female interpreters, Stella Kruk by name, (a Pole) re-appeared in the works and, in the name of herself and of three other prisoners who had returned to the works, presented herself to the Commandant of the Works (Russian Military Administration - insertion made by us) requesting re-employment."

(c.f. Exh. 29, Document 30, Gajewski Document Book II, p. 39-41) c.f. in this connection Exh. 55, Document 58, Gajewski Document Book IV, p. 9-10, Fig. 15 also).

In this connection:

The fact that the defendant attempted, according to the statement made by him during his interrogation, to keep down to a minimum the number of prisoners employed in the Film factory, despite the fact that the factory could doubtless have employed considerably more, deserves mention. Of a total staff of as many as 12,000 workers, there were never more than 400 prisoners, and towards the end of the war, this number was reduced to about 225.

(c.f. p. 8253 of the English Court Transcript, p. 8328 of the German).

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11) On the subject of the employment of concentration camp inmates in the I.G. Works at Auschwitz, the defendant made the following statement during the interrogation:

He remembers having heard of the employment of concentration camp inmates on the occasion of a lecture delivered by the defendant Dr. Ambros at a meeting of the Technical Committee, during which Ambros explained the reasons for the choice of the site for the new Buna works. Among these, the most prominent were the favorable conditions governing the supply of water, the flat character of the land and the proximity of sources of coal, lime and salt. As far as he remembered - and he remembered the occasion well - it was these - which had been the decisive factors in the choice of the site, and not the proximity of the Auschwitz concentration camp.

(c.f. p. 8348 of the English Court Transcript, p. 8323 of the German).

The question of how the prisoners came to be employed at Auschwitz will be dealt with in connection with those of the defendants who are more closely concerned, to the evidence submitted in the cases against whom I refer at this time.

It must be stated, however, that the defendant Dr. Gajewski had nothing to do with this question, and that the Prosecution have brought no evidence to the contrary.

On the subject of the alleged ill treatment of the prisoners in the I.G. Works, Auschwitz, may I first of all draw attention to the statement made by the defendant during the interrogation, to the effect that he himself was at Auschwitz and that neither during meetings of the Technical Committee or of the Vorstand nor during the Betriebs-fuhrer conferences did he ever hear anything which might have led him to suspect that the prisoners were being ill-treated at Auschwitz. He never heard anything of this nature during conversations with his colleagues either.

(c.f. p. 8349 of the English Court Transcript, p. 8324 of the German).

Moreover the Prosecution has brought no evidence which could prove the contrary.

Of the alleged selection parades held in the I.G. Works, Auschwitz for the purpose of selecting prisoners from among those employed in the works to be put to death by gassing, the defendant heard precisely as little as of the delivery of Zyklon B by Degesch. He heard of these occurrences for the first time after the war through the Press, and the name Zyklon B was unknown to him until the opening of this case.

The same applies to the delivery by the I.G. of pharmaceutical products to concentration camps for purposes of medical experiments to be carried out on the inmates of such camps, against their will and following the artificial infection of the subjects, of which "the I.G.", according to the Prosecution's assertion, had full knowledge. The defendant never heard of any such activities.

(c.f. p. 8349/50 of the English Court Transcript, p. 8324/25 of the German).

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Consequently, the Defense is of the opinion that no charges can be made against the defendant in connection with the alleged maltreatment of prisoners in the I.G. Werke, Auschwitz, and the alleged employment of prisoners in violation of the provisions of international law from the point of view of crimes against humanity.

The same applies to the alleged participation of the I.G. in the conduct of criminal medical experiments on prisoners in the form of the supply of the appropriate preparations, and to the so-called Degesch cabins.

(12) In the course of the interrogation, the Prosecution submitted three letters from the Management of the I.G. Werke, Landsberg of Sparte III in connection with the employment of Russian prisoners of war on the building site of this works.

(c.f. Exh. 1953, Document NI - 13451)
(c.f. Exh. 1954, Document NI - 13 544).

In this connection, the Prosecution raised the question of whether the poor state of health of these prisoners of war mentioned in the letters and the circumstance that a large number of these men died in the prisoner of war camp, was not attributable to undernourishment and overwork.

(c.f. p. 8322/23 of the English Court Transcript,
p. 8405-07 of the German).

The defendant stated, on this subject, that these prisoners of war did not fall ill or die for this reason but because they were in an exceedingly poor state of health when they arrived. For this the military administrative authorities concerned or the Stammlager in which the prisoners of war were detained, were alone responsible. All possible wheels had been set in motion in an attempt to eliminate these abuses.

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He had even forwarded the letter dated 24 January 1942 from the Landsberg Works Management to the District Management in order to call their attention to the conditions described in the letter. Furthermore he had commissioned Herr Herrmann of Agfa, Berlin SO 36 to deal with the matter.

(c.f. Court Transcript as cited above)

The authenticity of this statement of the defendant is confirmed in the affidavit by Herrmann, Dr. Hofmann, Dipl.-Ing. Richter, Seethaler and Westhoff.

(c.f. Exh. 73-77, Document 76 - 80, Gajewski Document Book V, p. 1 - 24).

From these depositions, it appears that the Russian prisoners of war in question working on the building site of the Landsberg Works were allocated to the works at the end of November 1941 and that the standard of health was extraordinarily poor even at that time, with the result that only a proportion of them were able to work.

These statements reveal, furthermore, that the appropriate military authorities attempted to impute the responsibility for this poor condition, which was entirely their own, to the management of the Landsberg Works, despite the fact that the latter made constant endeavours within the very restricted sphere of authority left to them in view of the fact that the military authorities alone were authorized to deal with such matters, to relieve the hardships. For the details of the case, I refer you to the above-mentioned affidavits.

In so far as the exclusive responsibility of the military authorities for the above-mentioned circumstances is concerned, the affidavit by the former General Westhoff, of OKW, Inspector in Chief of the Prisoner of War Service is of special significance. He states that the administrative and disciplinary authority over the prisoners of war was the exclusive sphere of the military commands and that they alone were responsible for the accommodation, food, treatment and allocation to duties of the prisoners of war.

(c.f. Gajewski Document Book V, p. 24).

For the rest, the deponent Dr. Hofmann states that the defendant Gajewski first heard of the events in question from him when his negotiations with the Stempelger in which the prisoners of war were housed, had reached a complete deadlock, and Dr. Gajewski, who shared his opinion of the intolerability of the situation, immediately appointed the deponent Herrmann Chief of the Department of the Directorate of Agfa in Berlin, to support him.

(c.f. Gajewski Document Book V, p. 12)

The deponent Herrmann confirms in turn that the defendant commissioned him to do everything in his power to settle the matter, and that his negotiations with the Wehrmacht had shown that no reproaches could justifiably be made against the management of the Landsberg Works in this connection. He thereupon reported to the defendant accordingly.

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The latter had never imagined anything different. Otherwise, Dr. Gajewski's whole attitude would doubtless have prompted him to take energetic action, as he judged severely any instance of the maltreatment of workers, irrespective of whether they were Germans or foreigners.

(c.f. Gajewski Document Book V, p. 1 - 4).

The Defense is therefore of the opinion that the conclusions drawn by the Prosecution from the letters in question are false and that the Prosecution is not in a position, in this connection either, to substantiate an accusation of crimes against humanity.

In connection with the Landsberg Works, the Prosecution has submitted an application filed with the Technical Committee, for a loan for the purpose of building hutments for the accommodation of foreign workers.

(c.f. Exh. 1400, Document XI - 2797, Document Book VI, p.3).

From the contents of this loan application, the Prosecution draws the conclusion that some 2,000 foreign workers were to be housed in a room the area of which was approximately 1,800 sq.m., so that each of the workers would be allotted a space of less than 1 sq.m.

(c.f. provisional Trial Brief of the Prosecution,
Part III, p. 27).

If the Prosecution had studied this document more closely, they would have been able to ascertain immediately that the hutments in question were to be used as living rooms, a fact which can be seen from the subject of the loan application, namely "Aufenthaltsbaracken" (hutments for use as living rooms).

As the deponent Richter states in his affidavit, these hutments were designed to be used as changing and washing rooms and for the serving of the meals provided by the Works, and were to be used at any given time by a single one of the groups of workers employed on a three shift basis. For the rest, the total number of workers in the plant for which the hutments were intended amounted to only approximately 800 at the beginning of the year 1945.

(c.f. Exh. 32, Document 31, Gajewski Document Book II,
p. 43).

Closing Brief Gajewski

Count IV of the Indictment

The defendant Gajewski is not indicted under this count of the indictment. Nevertheless, the Prosecution has introduced two affidavits by former SS-Obergruppenfuehrer Pohl, in which the latter states that, visiting the Wolfen Film factory at the invitation of the defendant, he saw the latter in uniform.

(c.f. Exh. 1583, Document XI - 399, Document Book 91, p. 19 of the English, 22 of the German)
and Exh. 1292, Document XI - 352, Document Book 57, p. 29 of the English, 38 of the German).

The witness Pohl corrected these statements during his cross-examination by stating that he might very well have been mistaken, and that the person whom he had seen in SS uniform had probably been a Foreman of the Film factory, whose name he remembered (sic).

(c.f. p. 4224/25 of the English Court Transcript, p. 4353/53 of the German).

The defendant himself stated on this subject during his cross-examination that he had never been an active member of the SS and that he had never done anything to promote its ends, that he had neither invited the witness Pohl to visit the works, nor had he conducted him through them.

(c.f. p. 8288 of the English Court Transcript, 8368 of the German).

This statement is confirmed in the affidavit by Heinz Farslau who, at the time of Pohl's visit to the Film factory, was Chief of the Administrative Branch of the General SS in the Saxony area. Farslau states that the sole purpose of the visit in question was to give the visitor an insight into the methods employed in the production of photographic film and that the visit had nothing whatsoever to do with his duties in the sphere of SS administration.

(c.f. Exh. 54, Document 57, Gajewski Document Book III, p. 56).

Closing Brief Gajewski

Count V of the Indictment .

With reference to this Count, the defendant stated decisively :
during his interrogation that he never met with the other defendants
or with any representatives of the National Socialist Regime for
the purpose of participating in a conspiracy to commit crimes against
the peace.

(c.f. p. 8389 of the English Court Transcript,
p. 8369 of the German).

In this connection, may I again draw the attention of the Tribunal
to the statements made above on the defendant's lack of knowledge
of the aims of the National Socialist Government in the field of
foreign policy, and of its aggressive intentions. The defendant
has made the following statement on the subject, I quote:

(c.f. above ref. to Court Transcript)

"The idea that I should be thought to have
taken part in such a conspiracy, in spite
of everything, appears to me so absurd
that I should like to spare myself the
task of making further comments on the
subject, and it is a task which I can
spare myself."

Summary of the Statements contained in this Trial Brief:

The Defense is of the opinion that the evidence submitted leads to
the conclusion that the defendant Dr. Gajewski is not guilty on
any count of the indictment, and should therefore be acquitted.

signed: Dr. W. v. Metzlor
.....
(Dr. W. v. METZLOR)

Nuernberg, 2 June 1948

signed: Carl Weyer
(Carl WEYER)

Closing Brief Gajewski

CERTIFICATE OF TRANSLATION

14 June 1948

We,

Victoria ORTON,	ETO # 20129,
Eugene R. KUN,	D - 429798,
Anne MARTIN,	ETO # 20144,
Brigitte TURK,	ETO # 35130,
Leonard J. LAWRENCE,	ETO # 20138,
Alfred RAEL,	B - 398081,
Patricia E.C. WOOD,	ETO # 20139,
Julius J. STEUER,	AGO - A - 442654,
Beryl C. BESWICK,	ETO # 20183,

heroby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of Closing Brief Gajewski.

.....
Eugene R. KUN
D - 429798,
pages 1 - III,
17 - 21, 46 - 51

.....
Anne MARTIN
ETO # 20144,
pages 1 - 3,
10 - 16

.....
Brigitte TURK
ETO # 35130,
pages 4-6, 31-35,
52-55, 66-68

.....
Leonard J. LAWRENCE
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pages 22 - 25,
56 - 60

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36 - 40

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74 - 78

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Beryl C. BESWICK
ETO # 20183,
pages 61 - 65,
79 - 86

.....
Victoria ORTON
ETO # 20129,
pages 69 - 73

Claudio B. 107, Gammara
(B. 107)

Case 6
Defense

TRANSLATION OF CLOSING BRIEF GATTINEAU
OFFICE OF CHIEF OF COUNSEL FOR WAR CRIMES

CLOSING BRIEF

of the Defense

for the Defendant Dr. Heinrich GATTINEAU

Nuernberg, May 1948

Rudolf ASCHENAUER

Defense Counsel

Military Tribunal VI

Nuernberg

guy



CLOSING BRIEF GATTINEAU

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Correction inserted before pg. 1

CLOSING BRIEF GATTINEAU

CERTIFICATE OF TRANSLATION

16 June 1948

We, Harry Ed. Gleichman, AGO No. A 443029, Adolph Imethaus, AGO No. B 398010, Robert Hoffmann, AGO No. 20162, John E. Robinson, AGO No. X 046350, Joseph E. Gesser, AGO No. B 397993, Fred Salomon, AGO No. A 446622, hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of the Closing Brief Gattineau.

Harry Ed. Gleichman
AGO No. A 443029

Adolph Imethaus
AGO No. B 398010

Robert Hoffmann
AGO No. 20162

John E. Robinson
AGO No. X 046350

Joseph E. Gesser
AGO No. B 397993

Fred Salomon
AGO No. A 446622

Corrections pertaining to the Defense
Closing Brief for the defendant Dr. Heinrich Gattineau
(English Translation)

Page:	line:	Instead of:	It should read:
I	17	Political Economy	Economic Political
1	7	his way through university	as employee besides his studies at the university
4	36	Political Economy	Economic Political
4	38	(missing)	Office for Trade Economy in Frankfurt
5	17	Political Economy	Economic Political
6	24	connection with	function within
8	22	knowledge of the records	knowledge acquired from the records
9	9	attorney Nath of the Defense	Defense Counsel Nath for the Defense
9	13	crossed	crossed
9	15	this deprives the incorrect claims of a factual basis	this makes unnecessary an answer as to facts to the incorrect allegations of the prosecution
11	16	War Economy Ministry	Reich Ministry of Economics
12	12	in Austria	within Austria
18	4	maneuvers	training
18	20	of his previous political conviction	of the political charges connected with the "Roehm-affaire"
(Remark: In the interest of facilitating the translation, this part of the sentence has been somewhat changed in German, too.			
18	22	Political Economic	Economic Political
25	18	at that time	at this time
27	21	Ersmann	Ersmann
30	9	Zubowski	Zukowski
33	31	this old version	even this old version
44	1	Political Economic	Economic Political
46	6	to requisition, from the pertinent agencies	to ask for, from the competent agencies,

Page:	line:	Instead of:	It should read:
48	14	Prosecution	Defense
55	12	Ministry of Finance	Ministry of Economics
53	3	of impositions made by the State, and operated	of orders imposed by the State, and operated by the I.G.
67	9	wholesale	large
67	11	cellulose	artificial - fibre
67	25	through	through
69	13	0	-
69	14	exception	exception
70 before	1	(insertion)	r e s u l t:
70	6	3.	5.
70	24	and	Further evidence
71	11	nor	no
71	15	invested	participations
71	16	combined	combine
71	21	connected.	connected

W. H. Anderson

CLOSING BRIEF GATTINEAU

I.1)

Professional Development.

Dr. Heinrich Gattineau was born on 6 January 1905 in Bukarest. His studies in Munich comprise law, political economics, and industrial economics. In 1927 he gets his degree of Dr. oeconomiae publicae under Geheimrat Adolf Weber. Alongside of his studies he goes through a commercial apprenticeship, and works his way through university. He receives his first employment as a scientific assistant in the secretariate of Geheimrat Duisberg, beginning 1 January 1928. Subsequently he is put in charge of Secretariate 2, and the Central Section for Economic Questions of the Leverkusen Works. He collaborates in Geheimrat Duisberg's sphere of tasks, as far as it has to do with the latter's capacity as Chairman of the Reich Association of German Industry, and member of the board of numerous scientific and students' aid organizations.

On the witness stand (Page 12094 of 21 April 1948) Dr. Gattineau gives a characterization of Geheimrat Duisberg as an economic leader. Besides Geheimrat Bösch, Geheimrat Duisberg was up to his death in 1935 the leading personality in the I.G. Duisberg advocates free trade, European economic understanding, understanding with France, and internal economic collaboration. Duisberg repudiates any idea of political expansion, he supports the Weimar Republic, particularly the Brüning Government, represents the political line of Stresemann. Duisberg opposes the attempts of Kirdorf, Thyssen, and Funk to win him over to National-Socialism. Dr. Gattineau shares Geheimrat Duisberg's conceptions.

CLOSING BRIEF GATTINEAU

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Evidences (Doc. Ex. I),

Gattineau Doc. No. 8, Exh. 1, Affidavit Professor Weber,

" " " 7 " 2, " " Konon,

" " " 8 " 3, Excerpt from the book: "Treatises, Lectures, and Speeches", by Carl Duisberg,

" " " 9 " 4, Excerpt from the book: "Carl Duisberg, a German Industrialist",

" " " 10 " 5, Affidavit Kritzer

as well as

Direct examination of Gattineau (P. 12092 - 12097, 21 April A.M.).

After Geheimrat Duisberg's resignation from the chairmanship of the Reich Association of German Industry, Dr. Gattineau, at Geheimrat Bosch's proposal, takes over at the end of 1931 the direction of the Press Office of IG-Farben. He is called in by Bosch to assist him in questions concerning the press and economic informations, prepares trips abroad for Bosch, and accompanies him on them.

About the person of Geheimrat Bosch Dr. Gattineau says on the witness stand: (P. 12143, 22 April A.M.): "Bosch was a genius in the sphere of natural and technical sciences. Bosch, up to his death in 1940, was the guiding influence as regards the attitude and development of the I.G. He enjoyed supreme authority. He supported the Brüning Government, and declined the radical course and the racial theory of Hitler and National Socialism. Bosch's attitude was likewise one of approachment in the sphere of foreign policy and internal economy."

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CLOSING BRIEF GATTINEAU

- 3 -

Evidence: (Doc. Bk. I),

Gattineau Doc. No. 11, Exh. 7, Affidavit Freiherr von Lersner,

" " " 12, Exh. 8, " Ernst Telschow,

" " " 13, " 9, " Kurt Duisberg,

Schmitt " " 6, " 53, " Buscher,

" " " 6, " 10, " F. Kall.

Gattineau " " 14, " 11, Excerpt from the Transcript of the Flick Case, 11 July 1947,

as well as

Testimony Professor Gerlach (P. 8954/55, 11 March P.M.)

" of the witness for the Prosecution Frank-Fahle (P. 2041, 14 October A.M.)

Direct examination of Dr. Gattineau (P. 12143 ff, 22 April A.M.).

The task of the Press Office of the IG was to provide for the information of the press about the work of the IG, to create a favorable atmosphere for the IG, and to ward off attacks. The Press Office was under Prof. Selok's control.

Evidence: (Doc. Bk. I),

Gattineau Doc. No. 16, Exh. 12, Affidavit Dr. B. Dietrich,

Gattineau Doc. No. 16, Exh. 13, Affidavit Annette Becker-Berke,

as well as

Direct examination of Dr. Gattineau (P. 12145, 22 April A.M.)

Beginning in 1932, Dr. Gattineau, on Roehm's desire, participates in the capacity of Head of the Press Office in the meetings of the Working Committee as a guest, without being a member of the Working Committee. This participation lasts up to 26 April 1935, i.e. as long as he directs the Press Office.

- 3 -

Closing Brief Dr. Gattineau

- 4 -

Evidence (Doc. Book I)

Gattineau Doc. No. 17, -ch. 14, Excerpt from Bassler examination.

Gattineau Doc. No. 18, -ch. 15, Affidavit Dr. Curt Duisberg,

Gattineau Doc. No. 19, -ch. 15, Excerpt from the minutes of the 72nd meeting of the Working Committee.

Gattineau Doc. No. 23, -ch. 17, Affidavit Dr. Gattineau as well as

Direct examination Dr. Gattineau (page 12146 from the morning of 22 April)

As leader of the Press Bureau Dr. Gattineau is assigned in 1933 by Funk to collaborate on foreign questions with the group of experts. This group was dissolved again on June 30 1934 (see point II 1c). In the same way he is appointed to the National Advertising Council of the German Economy in 1935 (see point II 1c).

During the time he was with the Press Bureau Dr. Gattineau worked on the publication of the "Vencer" of Duisberg. He assigned his part of the royalties to the Alas Brandstrom foundation which had been established for the Brandstrom family which had been politically persecuted.

Evidence (Doc. Book II)

Gattineau Doc. No. 26, -ch. 26, Correspondence between Duisberg and Gattineau,

Schmitz Doc No. 14, -ch. 26, Handling the establishment of the Alas Brandstrom foundation by Duisberg,

as well as

Direct examination Dr. Gattineau (page 12154 from the morning of 22 April).

On 7 September 1932 Scheinert Losch informed the Working Committee that the Central Committee had decided to form a Political Economy Department which was to consist of the Press Bureau, the Office for Trade Policy in Berlin, and the Central

This is under the leadership of Dr. Cattinone (see point II 1 d). The Department was under Professor Selch until 30 June 1934. After this it was under Dr. Ilmer and Dr. Krueger. In 1935 the areas Burton was separated and put under Dr. Krueger. In 1933 Dr. Cattinone became a proburist, since the correspondence of the Department requires a personal signature. However he does not belong to the management of B 7, which consists of Ilmer, Krueger, and Frank-Schick.

Evidence: (Doc. Book II)

Cattinone Doc. No. 24, ex. 25, Excerpt from the minutes of the 23rd "ordin" committee meeting.

Examination Dr. Ilmer (pgs. 1228/1230 from the version of 15 March)

Examination of Prosecution witness Frank-Schick (page 1233 from the version of 22 March).

Dr. Cattinone remains in charge of the Political-Economic Department until the end of 1935. From December 1934 until the middle of April 1935 he goes on a trip with an Industrial Committee to South Africa to study possibilities of increasing German commercial dealings with South Africa, and North and South Rhodesia. In Pretoria Dr. Cattinone is surprised by the news of the Austrian Anschluss.

Evidence: (Doc. Book II)

Cattinone Doc. No. 24, ex. 25, Affidavit of Green as well as

direct examination Dr. Cattinone (page 12157 from the version of 22 April)

At the end of April 1938 Dr. Gattineau was given the assignment of assisting Dr. Ilgner in his efforts to effect the recall of the Commissioners assigned to the Austrian IG plants (see point II 2 a). Further assignments in Austria: supporting Fischer in the organizational measures necessary for the establishment of Donauchemie (II 2a). In the middle of 1938 Dr. Gattineau becomes titular director. About the meaning of this title see:

Querein Doc. No. 20, Gattineau Kh. 30 (Doc Book II).

At the end of 1938 Dr. Gattineau gives up the leadership of the Igo and on 1 January 1939 takes over the position of managing director of the AG Dynamit Nobel Fressburg. He is in charge of commercial and financial matters; technical matters are taken care of by his colleague Dr. Carl Meyer. In conjunction he carries out a comprehensive reconstruction program in Fressburg. By means of far-reaching social measures he raises the standard of living for the employees and the laborers without regard to nationality. As managing director of the AG Dynamit Nobel Fressburg he looks after the interests and obligations of this company to its subsidiary and holding companies in the South East (see point II 3).

In 1941 he is appointed to the Vorstand of Donauchemie. It was his task to handle commercial and financial matters and to bring about a collaboration with the AG Dynamit Nobel Fressburg. After 1 January 1939 Dr. Gattineau had no direct connection with the IG. During the war there was no change in his basic earnings. Alterations occur only in the case of special compensations which were determined by the Verwaltungsrat according to the net profits.

Closing Brief Dr. Gattineau

- 7 -

After the collapse in June 1945 Dr. Gattineau continues his industrial activities. He converts the Aschau factory to peace production and after an extensive examination he is appointed as custodian and head of the Aschau factory by a Commission of the Bavarian Military Government.

Evidence: (Doc. Book V)

Gattineau Doc. No. 99, Exh. 132, Affidavit Dr. Fincher, Seitz

Gattineau Doc. No. 81, Exh. 113, Affidavit Dr. Carl Hoyer,

Gattineau Doc. No. 100, Exh. 114, Affidavit Dr. Rudolf Schmidt as well as

Direct examination Dr. Gattineau (see 12257 ff from the morning of 23 April)

Examination Dr. Ilgner (see 9636 ff from the morning of 19 March)

Examination Dr. Kuehne (see 10229 from the morning of 31 March)

Examination Dr. Bueterfish (see 8861 ff from the afternoon 10 March)

Examination Dr. Gajewski (see 8290 ff from the morning of 3 March)

I. 2)

Contact with Political Questions

The Prosecution claims that Dr. Gattineau was a leading political representative of the IG and that he has brought the IG in contact with leading political persons. As proof for this statement the Prosecution presents the following:

Affidavit Dr. Reithinger NI-3763, Exh. 2332, presented later

Affidavit Guenther Sahiller NI-9511, Exh. 2561, presented later,

Affidavit Dr. Krueger NI-11370, Exh. 1105, Doc. Book 53; page 115

Closing Brief Dr. Gattineau

- 7 -

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Evidence: (Doc. Book V)

Gattineau Doc. No. 99, Exh. 132, Affidavit Dr. Fischer,
Seite

Gattineau Doc. No. 81, Exh. 113, Affidavit Dr. Carl Meyer,

Gattineau Doc. No. 100, Exh. 114, Affidavit Dr. Rudolf Schmidt
as well as

Direct examination Dr. Gattineau (see 12257 ff from the
morning of 23 April)

Examination Dr. Ilgner (see 9636 ff from the morning of
19 March)

Examination Dr. Kuehne (see 10229 from the morning of 31
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Examination Dr. Buefisch (see 8861 ff from the after-
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later,

Affidavit Dr. Krueger NI-11370, Exh. 1105, Doc. Book 53, -
page 115

Closing Brief Dr. Gattineau

- 8 -

File notice Duisberg, Adolf Hitler Charity, NI-3799, Exh.

74, Doc. Book V, Page 3,

List of Names, NI-15234, Exh. 2135, presented later, cross
examination Dr. Gattineau

Affidavit Dr. Nosok, NI-10421, Exh. 1064, Doc. Book 52, page 41,

Affidavit Dr. Gattineau (Career), NI-8788, Exh. 28, Doc. Book III,
Page 20

Affidavit Dr. Gattineau (Statement), NI-2757, Exh. 291, Doc. Book XI,
Page 48

Affidavit Dr. Gattineau (General) NI-4833, Exh. 26, Doc. Book III,
Page 12

The Affidavit of my client, exhibit 26, was rescinded by NI-
8170, Exh. 27, Doc. Book II, Page 19 dated 31 May 1947.

In the direct examination (Page 12185 from the morning of 22
April) and in the rebuttal Gattineau Doc. 114, Gattineau
Exh. 192 (Affidavit Gattineau), as well as on the witness
stand in the rebuttal examination (page 14153/54 from the
afternoon of 10 May) my client has described the circumstances
under which the affidavit prepared by the Prosecution was
made and his vain efforts to have all the erroneous statements
corrected. My client's affidavit (Gattineau Doc. 43), which
was corrected in accordance with his knowledge of the records,
was introduced as Gattineau Exh. 49. The history of my
client's career (Prosecution Exh. 28) and his Statement (Pro-
secution Exh. 291) were corrected in accordance with my
client's knowledge of the records on the witness stand (page
12188 from the morning of 22 April), The Reithinger affidavit
(Exh. 2332) contains several statements which concern the
personal and political attitude of Dr. Gattineau. Just about
the same statements are contained in the Schiller affidavit
(Exh. 2359), both of which were prepared by the interrogator
Verber.

When cross examined by the Defense, the witness Reithinger declared that the statements, in so far as they pertained to Dr. Gattineau, were either false or were based on rumors and assumptions. The witness had to admit that he did not have concrete knowledge in either of these cases. (Page 13075 from the morning of 30 April, Commission). The Defense reserved the right of cross examination in regard to the Schiller affidavit. (Page 13750 from the afternoon of 8 May). Thereupon the Prosecution came to an agreement with Attorney Nath of the Defense that all parts of the Reithinger affidavit (Exh. 2332) and of the Schiller affidavit (Exh. 2351), which the Prosecution had not brought out in cross examination, should be crossed out (see page 13833 from the morning of 7 May). This means that in both affidavits all parts that concern Dr. Gattineau are eliminated. This deprives the incorrect claims of a factual basis.

Dr. Krueger has made the general statement in his affidavit (Exh. 1106) that my client had transmitted requests from Party offices and organizations to the IG. Under cross examination he limited this himself to the SA up to 30 June 1934 - that is to the SA under the leadership of Roehm - (page 2909 from the morning of 28 October). In his affidavit Doc. No. 11370, Exh. 1106, Dr. Krueger says that Gattineau seemed, by virtue of his Party connections, especially suited for the negotiations. Under cross examination (page 2995 from the morning of 29 October) he can only remember the name of one person whom Dr. Gattineau knew in Austria, namely Dr. Bilgeri, an acquaintance from Dr. Gattineau's student days. This Dr. Bilgeri was in charge of Ruffelsberger's office staff and therefore can not be considered one of the leading political personalities.

CLOSING BRIEF GATTINEAU

- 10 -

Noack says in his affidavit (Exh. 1054) that Dr. Gattineau was sent to Austria at this time since Guenther Schiller did not have the requisite Nazi connections which were necessary for the purposes. The value to be attached to these vague statements of this Prosecution witness, who once in 1928 tried to obtain the position as secretary to Geheimrat Duisberg which was given to Dr. Gattineau, is shown by the cross-examination (Page 2880 of 28 Oct., A.M.). As the witness himself says, he never occupied himself with matters concerning Austria. At the best, therefore, he supports himself by conjectures and hearsay (see also remark by the President, page 2858 ff. of 27 Oct P.M.).

With Exh. No. 74 the Prosecution seeks to prove that Geheimrat Duisberg worked energetically for the Winter Relief Fund. This argument is untenable, as the Prosecution's allegation involved a confusion of names: it was not Dr. Carl Duisberg but Dr. Curt Duisberg who took part in the conference mentioned in the document about the winter relief work in the Reich Association of German Industry, as is shown by Document No. 33, Exh. 38, affidavit of Dr. Curt Duisberg.

As appears from Dr. Gattineau's career, before 1933 he was closely acquainted with only the following individuals who were in touch with National Socialist policy: Prof. Haushofer, who lectured on geography in Munich, Hans Hinkel, later Kulturwalter who was formerly in the Oberland, and Dr. Bilgeri, whom he knew from a skiing competition in the Oberland during his student days in Munich.

CLOSING BRIEF GATTINEAU

- 11 -

Prosecution Exh. 2135 is a handwritten list which was compiled as the result of an order given by the interrogator Verber, who required Dr. Gattineau to write down the names of people of only the highest ranks and positions whom he could remember. This appears from the document itself. That does not mean that Dr. Gattineau was either intimately acquainted with all these people or had anything to do with them. Dr. Gattineau comments on this document in his cross-examination (page 12291 of 23 April A.M.). 60% of the SA list consists of names of people who were shot on 30 June 1934. The SS list contains two names - Bergmann and Reiner - who belonged to Roehm's staff and whom Dr. Gattineau did not see any more after 30 June 1934. The others are government officials with honorary ranks in the SS whom Dr. Gattineau met or saw at some time or other in connection with the physical performance of his professional duties in Berlin, Vienna or Bratislava (page 12292 ff. of 23 April A.M.). The OEd list contains, among others, the names of two War Administrative Chiefs who were civil servants in the War Economy Ministry: Dr. Fischer and Dr. Bergemann. Before the outbreak of the war, that is to say also in 1938 during his work in Austria, Dr. Fischer was exclusively an employee of the I.G. It was not until September 1939 that he was conscripted for compulsory service in the Reich Ministry of Economics and appointed War Administrative Chief during the war, so that Dr. Gattineau's testimony under cross-examination (page 12293 of 23 April A.M. and page 12304/12305 of 23 April P.M.) represents the actual situation.

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- 12 -

Further evidence:

Ilgen's examination, page 9686 ff. of 19 March A.M.,
Bustefisch's examination, page 8861 ff. of 10 March P.M.,
Bustefisch Doc. No. 305, Exh. 177, Bustefisch Doc. Book VII,
Siloher affidavit,
Bustefisch Doc. No. 286, Exh. 175, Bustefisch Doc. Book VII
Dihlmann affidavit.
Bustefisch Doc. No. 57, Exh. 161, Bustefisch Doc. Book VII,
Neumann affidavit

At first Dr. Bergemann was the official in the Reich Ministry of Economics in charge of economic matters which concerned commercial intercourse in Austria, later in charge of German-Slovakian commercial intercourse.

Evidence:

Gattineau Doc. No. 76, Exh. 106, Doc. Book IV, Bergemann affidavit.
The names in the list of the Party are individuals with whom Dr. Gattineau came into contact at some time or other in his professional work. His sole visit to Hitler in 1932 for the purpose of furnishing information, in connection with which Dr. Gattineau also met Hess, is discussed under II 1 b. Goebbels came 2 or 3 times to the conference of the Group of Experts, Funk also had something to do with this Group (see under II 1 c B). Hinkel knew Dr. Gattineau from his student days. Hitler and Hess did not see Dr. Gattineau any more after 1932. After 30 June 1934 Dr. Gattineau no longer came into contact with Goebbels and Funk, either.

a) His Contact with Political Affairs Up To 1933.

Dr. Gattineau entered the Oberland League in 1933 and remained a member until it was dissolved in 1933. Oberland was an organization which advocated honesty in political life, unity of the Reich and a steady consolidation of the State, and combated Bolshevik attempts to overthrow it.

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Among its members were Jews and Free Masons. After 1926 the NSDAP forbade its members to belong to the Oberland League. Oberland stood in opposition to the NSDAP.

Evidence: (Doc. Book II, as well as Supplement III)

Gattineau Doc. No. 29, Exh. 36, Dr. Friedrich Weber's affidavit,
Gattineau Doc. No. 110, Exh. 186, Dr. Ispert's affidavit., as well as
Dr. Gattineau's testimony (page 12161 of 22 April A.M.)

During his membership in Oberland Gattineau did not occupy himself with political matters. He took an active part in political life for the first time as a member of the Conservative People's Party, which in 1930/31 at the eleventh hour made the attempt to arouse the middle classes against the threatening radicalization of political life and thereby against National Socialism. Dr. Gattineau offered himself as a candidate on a Kreis ballot of this party. Election conventions led to physical quarrels with members of the NSDAP. The Conservative People's Party supported Reich Chancellor Bruening.

Evidence:

Gattineau Doc. No. 32, Exh. 32, Dr. Steinberg's affidavit
Gattineau Doc. No. 31, Exh. 33, Kritzer affidavit
Gattineau Doc. No. 35, Exh. 40, Hans Rechenberg affidavit
Gattineau Doc. No. 57, Exh. 72, Hans Schaevon affidavit,
Gattineau Doc. No. 41, Exh. 47, Peter Schaevon affidavit,
as well as
Direct examination of Dr. Gattineau (Page 12163 of 22 April A.M.).

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When in 1932 the election of Hindenburg, who had set himself up as an opposite candidate to Hitler, became acute, Dr. Gattineau, upon orders from Geheimrat Duisberg and from personal convictions, worked for this election and above all supported the Students' fraternities (Waffenstudentischen Organisationen) in their fight against the National Socialist Students' League and for Hindenburg's election.

Evidence:

Gattineau Doc. No. 32, Exh. 34, Hans-Heinrich Schulz affidavit,
Schmitz Doc. No. 24, Exh. 35, Pfeiffer affidavit,
Schmitz Doc. No. 26, Exh. 36, Gerecke affidavit,
as well as

Direct examination of Dr. Gattineau (page 12164 of 22 April A.M.).

In his direct examination Dr. Gattineau confirmed that he knew from conversations with Duisberg and Bosch that the disapproving attitude of the I.G. executives toward the NSDAP did not change when the latter came to power on 30 January 1933, and that neither Duisberg nor Bosch nor any other leading individual in the I.G. worked to bring Hitler into power. Nor did he know of any sizable contributions to the NSDAP before the seizure of power. Up to 1933 the Verwaltungsrat and the so-called Economic-Political Committee, to which Dr. Gattineau did not belong, were in charge of contributions. (page 12167 of 22 April A.M.).

Evidence:

Schmitz Doc. No. 25, Exh. 37, Kalle affidavit.

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During the visit made for informational purposes to Hitler by Drotfisch and Gattineau at the request of Goehardt Boech in 1932, no political questions were involved but several points in regard to technical press matters had to be cleared up, as explained and proved under Point II 1b.

b) Connection with questions of a political nature from 1933 to 30 June 1934.

Prof. Solck considered it necessary, due to the disorganized collection activity of the organizations and associations after 30 January 1933, to come to an agreement with the supreme SA leadership according to which these contributions were to be replaced by a collective payment.

As a consequence of this adjustment some large contributions were made by the I.G. (100 000 RM and 250 000 RM for the buying of overcoats) to the supreme command of the SA under Roehm, as a release from individual collections.

Dr. Gattineau carried on negotiations with the supreme command of the SA in regard to this matter by order of Prof. Solck, and thus came in contact with Gruppenfuehrer Schreyer, who was Roehm's Chief of the Administration Department. Some time later he is informed by Schreyer that Roehm conferred upon him the honorary title of a Sturmbannfuehrer (s.b.V.) (for special missions). After he had made inquiries as to Roehm's political standing and after hearing from Schreyer that Roehm follows a considerably more moderate line than Hitler and that he is in opposition to Hitler in regard to various questions as, for instance, the ~~approach~~ approach with France, regarding an understanding with the trade unions,

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and that he maintains a tolerant attitude in regard to questions of the church and that he rejects anti-semitic tendencies, he still requests the opinion of Geheimrat Bosch. ^{The latter} gives him the advice to accept the title, since it is necessary, to watch this development. Only then does Dr. Gattineau accept this title. Dr. Gattineau has no further knowledge of Roehm's political conceptions. He holds no office and carries out no functions in the supreme command of the SA. He has never been Roehm's economic adviser. With Roehm himself he spoke only three times, and this in regard to the rapprochement with France, collaboration with the trade unions, and in regard to Schacht. At the end of 1933 he receives the honorary rank of Standartenfuhrer. While a staff member of the supreme command of the SA in the form of an honorary leader, he introduced no leading person of the IG to Roehm, nor did he introduce them to any other persons in command of the Party or its formations.

Evidence:

Testimony Krueh, Page 5429 ff dated 16 January P.M.

Testimony Gajewski, Page 8290 ff dated 3 March A.M.

Testimony Schneider Page 7851 ff dated 20 February A.M.

Testimony Ilgner, Page 9636, ff dated 19 March A.M.

Testimony Haeberlein Page 6323 ff dated 3 February P.M.

Testimony von Meer Page 7187 dated 17 February A.M.

Testimony Krieger Page 6622 dated 9 February P.M.

Direct examination Dr. Gattineau (Page 12170 ff dated 22 April A.M.).

Dr. Gattineau is also involved in the events of 30 June 1934, the bloody suppression of the so-called Roehm uprising. He is arrested and

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is supposed to be shot. After escaping, merely by chance from getting shot, he resigns from the SA and retires radically from anything which might look like any political affiliation. Of the leading figures whom Dr. Gattinoneau knew at that time in the SA, Roehm, Ritter von Kraemer, Schneiderhuber, von Dettmer and Ernst are shot. These comprise most of the names mentioned in the SA list offered by the Prosecution. (Exh. 2135). This matter also has repercussions for Dr. Gattinoneau in the IG. His superior, Professor Solck, demands his dismissal. He remains in his position only due to the intervention of Geheimrat Bosch. But he and his department are then placed under the supervision of III 7 - Dr. Ilgner and Dr. Kraeger - . The management of the press department is taken away from him in 1935.

Evidence: (Doc. Book II and Supplement I)

Gattinoneau Doc. No. 34, Exh. 39, Affidavit Schreyer,
Gattinoneau Doc. No. 35, Exh. 40, Affidavit Rothenberg,
Gattinoneau Doc. No. 36, Exh. 41, Affidavit Justner,
Gattinoneau Doc. No. 37, Exh. 42, Affidavit Justner,
Gattinoneau Doc. No. 106, Exh. 43, Affidavit Stallings,
as well as

Direct examination Dr. Gattinoneau (Page 12176 dated 23 April A.L.)

Cross Examination Dr. Gattinoneau (Page 12292 dated 23 April A.L.)

Direct examination Dr. Ilgner (Page 9629/30 dated 19 March A.L.)

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c) Connection with questions of a political nature from 30 June 1934
up to the end of the war in 1945.

Dr. Gattinere endeavors to guard against his insecure position in Berlin. First he takes part in extensive military maneuvers and then he tries to cover up by joining the Party, as he intends to leave the country. But he keeps clear of any political activity, takes over no post and exercises no functions within the Party. Then, when he actually gets a professional position in Pressburg, he does not join the foreign organization of the Party and also avoids, as far as possible, participation in any meetings of the Party's foreign organization. He takes a liberal point of view in his private life. While conducting a sport club in Berlin during these years, he is able to keep out any Party political influence and guards members of the Jewish faith in the club against discrimination. From 1932 already, and up to the end of the war, he is continually a member of the Hagopian Circle, which also does not alter its attitude during this period and is a circle of persons who look upon National Socialism with a critical and opposing attitude. Wherever possible Dr. Gattinere guards the political and racially persecuted, aids them despite the great risk to which he exposes himself on account of his previous political conviction. Thus, he employs at that time political persecutees as co-workers in the Political Economics Department (WIPO), uses his influence in Austria for the politically persecuted and, in Pressburg, ensures the reasonable compensation of those former employees of these plants who had been pensioned off for racial reasons before he took charge.

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At the time he took up his activity in Austria, after the absorption in May 1938, Dr. Gattineau knew only Dr. Bilgoff there, whom he knew from college and who, furthermore, never held a leading political position, and Dr. Neubacher, who had previously been attached to NW 7 in Berlin. He knows no other political figures. He speaks to Seyss-Inquart once, and then only when the latter requests to be informed about the plans of the I.G. in regard to Donawichanie, i.e. only for reasons of a technical nature in regard to his profession. As far as he recollects, he did not speak to Koppler at that time, nor with Schirach or Buerckl.

Other official personages are dealt with in the discussion of the document (Exh. 2135, Page 11, of the Closing Brief). Questions of a political nature were not discussed in any instance, each case, rather, dealt only with the carrying out of his professional duties.

During the time from 30 June 1934 up to the end of the war in 1945 Dr. Gattineau also never established any contact between the IG and leading political figures. Dr. Erwich also testifies to this effect in the subsequent interrogation (Page 5429 ff dated 16 January P.M.) in regard to the question of whether Dr. Gattineau ever held a high responsible office, government position or any kind of government office: "Dr. Gattineau never held an office of that kind". Prof. Erwich certifies, in addition, that Gattineau never established any political contact and that he also never dealt with political problems of any kind within the I.G..

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Evidences:

Gattinerau Doc. No. 57, Exh. 72, Doc. Book III, Hans Schaeffer affidavit,
Gattinerau Doc. No. 42, Exh. 48, Doc. Book V, Mathilde Schiessel affidavit,
Gattinerau Doc. No. 38, Exh. 44, Doc. Book II, Brant affidavit,
Gattinerau Doc. No. 39, Exh. 45, Doc. Book II, Karlheinz Schoffler affidavit,
Gattinerau Doc. No. 40, Exh. 46, Doc. Book II, Walter Stagnier affidavit,
Gattinerau Doc. No. 56, Exh. 71, Doc. Book V, Siehrer affidavit,
Gattinerau Doc. No. 41, Exh. 47, Doc. Book II, Peter Schaeffer affidavit,
Gattinerau Doc. No. 4, Exh. 88, Doc. Book IV, Platzer affidavit,
Gattinerau Doc. No. 72, Exh. 102, Doc. Book IV, Geislinger affidavit,
Gattinerau Doc. No. 73, Exh. 103, Doc. Book IV, Thier affidavit,
Gattinerau Doc. No. 3, Exh. 89, Doc. Book IV, Hackhofer affidavit,
Ilmer Doc. No. 136, Exh. 109, Doc. Book IV, Hackhofer affidavit,
Gattinerau Doc. No. 90, Exh. 122, Doc. Book V, Soydel affidavit,
Gattinerau Doc. No. 86, Exh. 118, Doc. Book V, Koppke affidavit,
Gattinerau Doc. No. 83, Exh. 115, Doc. Book V, Wipperfurth affidavit,
Direct examination of Dr. Gattinerau (Page 12180 of 22 April A.M.).
Direct examination of the members of the Central Committee:

Krauch (Page 5429 of 16.1. P.M.)

Hörlein (Page 6323 ff. of 3.2. P.M.)

Schneider (Page 7451 ff. of 20.2. A.M.)

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Gajowski (Page 8290 ff. of 3.3. A.M.)

Krierion (Page 6622 of 9.3. P.M.)

ter Meer (Page 7187 of 17.2. A.M.)

as well as

Direct examination of Ilgner (Page 9636 ff. of 19.3. A.M.),

It is, therefore, proved that Dr. Gattinomi was not a political representative of the I.G. either before 1933 or after 1933 and that he did not bring the I.G. together with leading political personages.

II. General Questions in Connection with the Allegation of Aggressive War.

1 a)

Alleged Knowledge of Intentions to Wage an Aggressive War.

The Prosecution claims that the Third Reich had certain political aims which were known to the defendants and that they knew that if necessary Germany would use its military strength for invasion or attack against its neighbors in order to realize the aims of the Third Reich (Page 66 of 27.8. A.M.); reduced to a common denominator, therefore, it seeks to prove that the defendants had knowledge of intentions to wage a war of aggression. The following are to be considered the three chief points of evidence which the Prosecution uses to support this allegation:

1. Exh. 10, NI-7765, Doc. Book I, Page 48 ff.
(Paul Otto Schmidt affidavit)
2. Exh. 758, NI-8864, Doc. Book 39, Page 67
(Mischke affidavit),
3. Exh. 833, NI-6221, Doc. Book 46, Page 29
(Seeböhm conference)

in conjunction with
Exh. 1612, NI-6073, Doc. Book 46, Page 93 n.

Concerning the testimony of the witness Paul Otto Schmidt, Hitler's interpreter, who was also subjected to a lengthy cross-examination by the Defense, it must be stated that neither his statements in his affidavit (Exh. 10) nor his testimony during cross-examination can in any way support the allegations of the Prosecution. From the very beginning the witness does not undertake to prove with his surmises the alleged knowledge of the defendant of the aggressive war, but what he has in mind in his testimony is whether in his opinion one could have ascertained from Hitler's actions that "certain methods of the use of violence would be considered under certain circumstances" (Page 1547 of 2.10. A.M.). Later he explains the expression use of violence

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with the words "use of violence is purely a question of methods which could be used just as well for offensive as for defensive purposes." (Page 1571 of 2.10. P.M.). Of the "knowledge of the war of aggression" alleged by the witness there remains primarily only a mere knowledge of a possible use of violence. From the rest of the testimony, however, we see that this alleged knowledge of a "use of violence" refers only to a small group which is not identical with the defendants here. Neither this witness nor any evidence in this trial has proved whether knowledge could pass to the individual defendants in this trial here from this small group in which the witness surmises there was knowledge of the beginning of the war. On the contrary, the witness admits that the external conditions in Germany and the attitude of foreign countries toward Hitler Germany (visiting the Olympic Games, etc.) in the years before the beginning of the war gave German public opinion the impression of peaceful developments. Besides that, an indicative fact is one concerning the witness personally, namely, that he, as Hitler's interpreter and therefore as one who belonged among the inner circles of initiates, did not learn about the intended war against Poland by virtue of his professional position until 3 or 4 weeks before the event (Page 1543 of 2.10. A.M.). In conclusion, I should like to call attention to one more passage in the cross-examination of this witness which in my opinion is best calculated to defeat the aim pursued by the Prosecution of proving that the defendant had "knowledge of the war of aggression." I have submitted this part of the testimony of the witness Paul Otto Schmidt in my Gattineau Document Book V as Gattineau Document 95, Exh. 129, for purposes of identification and should like to call attention once again.

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to the decisive sentence with which the Prosecution witness Schmidt reduces the allegation of the Prosecution to an absurdity. To the question whether the average German, or even one of these defendants knew more of Hitler's intentions of waging a war of aggression than did Schacht and Doernitz, whom the IMT acquitted of this charge, he replied: "Definitely not!" (Page 1594 of 2.10. P.M.).

In the case of the second "star witness" of the Prosecution, the witness Mischke, it is sufficient, with reference to the probative value of his testimony, to call attention to the occasions on which he claims to have informed himself of public opinion in Germany. Significantly enough, he claims to have so informed himself "perhaps in the streetcar". Anyone who knew Germany from 1933 to 1945 can understand the ridiculously absurd effect that this testimony produces. Nobody would have dared to express his political opinions at this time in Germany in a public conveyance without necessarily expecting to vanish from the scene in the very next moment. If furthermore the witness reckons the group of persons from whom he claims to have formed his survey of public opinion in Germany at 100 to 150 persons it will then be readily understandable how little credibility can be ascribed to the affidavit which has been cited. (Page 1750 ff. of 8.10 A.M.). Here, too, proof is lacking that knowledge reached the defendants from this group (see remark by the President, page 1759 of 8.10 A.M.). In conclusion, I should like to point out once again that according to his own testimony the witness Mischke during the time in question saw only Dr. Ilgner of all the defendants on one occasion and did not know any of the others (Page 1762 of 8.10 A.M.). So much for the two

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such witnesses of the Prosecution concerning the alleged knowledge on the part of the defendants of intentions of waging a war of aggression.

In so far as the final main evidence for the knowledge on the part of the defendants of intentions of waging aggressive war, which I should like to discuss here in this connection, is concerned it is likewise typical in what rather conclusions as to the alleged knowledge are drawn by the Prosecution from such evidence. Exh. 833 is the record of a conference which was held in Berlin at which a Herr Seeborn from Reichenberg in Czechoslovakia (Manager of the Sales Office of the Farbon Sales Cooperative there) reported on the activity of the sales organizations in Czechoslovakia. This conference was considered of such little importance that they did not even send any member of the Vorstand at all or of the committees of the I.G. to it. On the contrary, only a few referents who were actually present in the building at Berlin NW 7 were called together for this conference. Even after detailed study the entire document fails to reveal the fact that at that time one had to reckon with the possibility "of taking over all Czechoslovakia at this date". In his reply (Page 2030 ff. of 14.10.A.H.) the Prosecution witness Frank-Fahle placed himself quite decisively in opposition to this completely unfounded conclusion of the Prosecutor. In this connection it is sufficient to call attention to the very detailed interrogation of the witness Frank-Fahle (Page 2027 ff. of 14.10.A.H.). This "personal information" (Frank-Fahle) which those present on the occasion received, cannot be interpreted to mean that having knowledge of an impending war of aggression they wanted to learn any possible details from Herr Seeborn. There are no reasons for supposing this.

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Dr. Gattineau was only temporarily present during the meeting of the Commercial Committee (Exh. 1612) at which this meeting described by the Prosecution as the Seebohm Conference was discussed. No proof was offered that he received this record as a guest at the meetings of the Commercial Committee, not even proof that he was present at all at this meeting of the Commercial Committee at the time of the discussion of this matter.

In this connection I take the liberty of referring to the interrogation of Dr. Gattineau (Page 12282 of 22.4. A.M.).

With respect to this pitiful evidence of the Prosecution alleging knowledge on the part of these defendants of intentions to wage aggressive war the Defense had submitted a long row of proofs and examined many witnesses about this question before the Tribunal. I shall now pick out the following most important general evidence of this kind:

Witnesses from industrial circles:

Gohelmarat Kastl, former active member of the Governing Board of the Reich Association of German Industry and delegate of the Aufsichtsrat on the Vorstand of the Augsburg-Schwaberg Machine Factory (MAN) at that time, (Page 5723 of 21.1. 1948 A.M.), who testifies that in view of the attitude of foreign countries toward Hitler and his associates one had no reason to expect any intentions of waging aggressive war.

Clodius Lemmer, acting member of the Reich Association of German Industry and politician of the Center Party (Page 5622 ff. of 20.1. A.M.), who talks about the enthusiasm of the German people at the conclusion of the Munich Agreement and their sorrow at the beginning of the war with Poland.

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Von Baum, former Minister of Economics prior to 1933 (Page 5691 ff., afternoon session of 30 January) who testifies in detail about the oppositional attitude of the German industrialists in respect to the war.

Ehmann, leading official of the economic group Chemical Industry and the Reich Office (Reichsstelle) Chemistry (Page 1728 afternoon session on 17 October), who confirms that until the final days no concrete news about the impending war were available either in the Reich Office Chemistry and the economic group.

Doering, Section Chief in the Reich Group Industry (Page 1345 afternoon session of 3 May), who states that no plans for a war of aggression were known in the Reich Group Industry.

Witnesses from Wehrmacht Groups:

Generalfeldmarschall Milch (Page 5321 ff., morning session of 15 January - 5335 afternoon session of 15 January), who as a witness describes the lack of armament in the German Luftwaffe which by no means justified the conclusion at all that a war was planned. He furthermore states that the belief in peace on the part of the German people was given support by Hitler's peace assurances in every gathering and every publication. He expressly points to the fact that the German public opinion, even after the Anschluss of Austria, had no reason to reverse its opinion.

Ehmann, leading official in the Army Ordnance Office (Page 3142 morning session of 30 October, as well as page 5354 ff. afternoon session of 15 January), who confirms that one could not assume in the Army Ordnance Office that Germany's armament was designed for a war of aggression; he corroborated this statement with figures from the manufacture of powder and explosives.

Reichsmarschall, chief of the staff of the Military Economy Office in the GEM (Page 13406 ff. afternoon session of 4 May, page 13498 morning session of 5 May), who speaks about the completely inadequate German armament for a war and confirms that even General Thomas, Chief of the Military Economy Office, did not believe that war was impending. In this connection he was told by Keitel as follows: "Be assured that Hitler will not start a war".

Witnesses from the Press and Radio:

Fritzsche, chief of the broadcasting section in the Propaganda Ministry (Page 13381 ff. afternoon session of 4 June), who testifies, on the basis of his position and thorough knowledge of the German public opinion during the period from 1933 till 1945, that "the possibility of a war was pointed out to the German people and that, if war would break out, it could only be in the form of an attack against Germany". He confirms that the overwhelming majority of the German people believed in Hitler's assurances for peace. He states the following about the state of the German public opinion at the outbreak of the war: "All I have found was that the expressions of horror, owing to the outbreak of the war, differed in severeness." In regard to the armament the witness states that the increase of the war potentiality was a natural result of the failure by the other powers to disarm, and in order to achieve an armament equality through rearmament on the part of the Germans.

Witnesses from the I.G.:

Frank-Fahle, Director of the I.G. and Alternate Deputy Reichsführer of the I.G. NF 7 (Page 2027 morning session of 14 October and Page 9807 ff. afternoon session of 23 March). The witness states that it was not the predominant opinion in Germany that Hitler was planning a war of aggression against the entire world and that the public opinion did not believe that Hitler might be capable of the stupidity of starting a war.

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V. Heider, Director of IG-Farben (Pages 1520/21 morning session of 3 October), who also denies that any knowledge of an aggressive war existed, especially not in the I.G.

Dr. Gorr, Section Chief of the Vermittlungsstelle W of the IG (Page 2689 morning session of 24 October) who testifies that he was not under the impression that a war of aggression was planned by Germany.

Erueger, Director of the IG and First Deputy Betriebsfuhrer of the IG HU 7 (Page 3323 morning session of 29 October), who states that there was no knowledge among the German public of plans for an aggressive war and that the German public was completely in the dark.

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Finally, at the end of this general listing of evidence, I should like to point to the 3 Document Books, submitted by the Defense on behalf of Professor Krusch with reference to the foreign policy, which in a convincing way refute the alleged knowledge of plans for aggressive wars, and I also like to refer to the examinations of all defendants in regard to this complex. As concerns this alleged knowledge of my client I have permitted myself to present a few characteristic documents (Document Book V).

Gattinomi Exh. 127, Doc. 96, Affidavit Babowski,
Secretary of my client,

Gattinomi Exh. 128, Doc. 128, Affidavit Dr. Carl Moyer,
colleague of Dr. Gattinomi
in the Pressburg management,

Gattinomi Exh. 130, Schmitz Doc. 35, Interrogation of Schacht III

Gattinomi Exh. 131, Doc. 97, Extract from IMT Judgment,

Gattinomi Exh. 29, Doc. 28, Doc. Book II, Affidavit Croon,
who participated in the trip to South
Africa,

Gattinomi Exh. 191, Doc. 112, Supplement III, Affidavit Dr. Carl
Moyer, colleague of Dr. Gattinomi in the
Pressburg management.

Gattinomi, Exh. 72, Doc. 57, Document Book III, Affidavit Hans
Schaeffer, secretary and later on office
chief of the WIPO.

Testifying as a witness in his own defense, my client has expressed his opinion to this question in detail (Page 12276 morning session of 23 April).

The following is evident from the entire evidence submitted by the Defense:

1. that there was no general knowledge of an aggressive war among the German people.
2. that there was no knowledge in the IG-Farbenindustrie of plans for aggressive wars.

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3. that no such knowledge existed in Dr. Gattinelli's immediate sphere of activity (Kraeger, Frank-Fahle, Ilgen, Exh. 127, 128, 29, 191, 72).
4. that Dr. Gattinelli had no general knowledge of preparations for a war of aggression or of plans for a aggressive wars and that he had neither a special knowledge of specific actions
 - a) on a trip to South-Africa he was taken by surprise when informed about the Anschluss of Austria (Exh. 29).
 - b) In view of the Munich Agreement and the subsequently ensuing propaganda he could not regard the solution of the Czechoslovakian question as an act of aggression (Gattinelli).
 - c) He did not have any knowledge of the impending start of the war. At that time he was in Corkum on a summer vacation. Since he was not classified as essential he was called by telegram at the beginning of the war for service in the Wehrmacht (Exh. 127).
 - d) He was also completely taken by surprise when informed that a state of war existed with Russia (Exh. 191).
 - e) Neither did he have any knowledge of other incidents which the Prosecution regarded as "preparations" and "wars of aggression" (Gattinelli).

Conclusions

1. The allegations of the Prosecution are not supported by any evidence it has produced.
2. To the contrary, the Defense has produced evidence for the fact that Dr. Gattinelli had no knowledge of "plans for a war of aggression" or "preparations for wars of aggression" and that he had no ~~advance~~ knowledge of actual aggressive acts.

II. 1 b)

Meeting with Hitler in 1932.
(compare Indictment I 7, Page 7).

Chapter A of the Indictment, headlined "The Treaty of the IG with Hitler and the Nazi Party", contains in paragraph 7 a description of the meeting Dr. Duesterlich and Dr. Gattineau had with Hitler in 1932. The Trial Brief of the Prosecution does no longer contain a special chapter referring to the "treaty", the meeting with Hitler rather is mentioned under Par. 3 "synthetic gasoline" in the chapter "The creation and armament of the Nazi war machine" (Page 33). Already in the arrangement of its Trial Brief, which is to contain the fundamental theories of the Prosecution, the Prosecution appears to withdraw consciously from the allegation with respect to the treaty. I shall express my opinion in detail to this question in my final Plea and herewith refer to the corresponding passages.

As regards the meeting of Dr. Duesterlich and Dr. Gattineau with Hitler in the fall of 1932, the Prosecution alleges that Hitler had promised to support the IG program for the manufacture of synthetic mineral oils, that is, either in the form of government subsidies or through higher protective tariffs or other measures (also compare Page 33 Trial Brief I and Opening Speech by General Taylor, Page 68 morning session of 27 August 1947) and furthermore alleges that Dr. Duesterlich and Dr. Gattineau had therewith established the basis for the treaty between the IG and Hitler which allegedly had lasted till 1945 (Page 276 morning session of 29 August, as well as page 13 of the Indictment).

In connection with these allegations the following documents have been presented by the Prosecution:

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1. Exh. No. 26, NI-4833, Affidavit Dr. Gattineau,
Doc. Book III, Page 4,
2. Exh. No. 27, NI-5170, Withdrawal of the affidavit,
Doc. Book III, Page 8,
3. Exh. No. 28, NI-8788, Affidavit Dr. Gattineau,
(Life-history), Doc. Book III, Page 9
4. Exh. No. 29, NI-8637, Examination of Dr. Buetefisch,
Doc. Book III, Page 18,
5. Exh. No. 30, NI-6767, Examination of Prof. Krensch,
Doc. Book III, Page 35,
6. Exh. No. 31, NI-6765, Statement Jaehne,
Doc. Book III, Page 47
7. Exh. No. 1977, NI-14304, draft of the Leuna festive publication,
subsequently submitted during Buetefisch's cross-
examination.

The first-mentioned document, Exh. No. 26, an affidavit of Dr. Gattineau, was superseded by the following document, Exh. No. 27, by Dr. Gattineau. With regard to this I contend that Exh. No. 26, the affidavit dated 18 March 1947, was obtained under mental pressure, under threat and under coercion to depose, according to Ordinance No. 1, Article 2, Section 33, that essential corrections were not taken into consideration and that it is consequently no admissible evidence. By way of Supplement I may be allowed to refer in this connection to my motion of 29 August 1947 as well as to Dr. Gattineau's testimony (Page 12185/12186 of 22 April, morning session). The corrected copy of this affidavit was submitted as Doc. Gattineau 43, Exh. 49, Doc. Book II Gattineau. The life history, which was corrected by my client on the stand (Page 12188 ff of 22 April, morning session) contains in its uncorrected draft (Exh. 28) the statement that during this visit "the attitude of the NS Party towards the question of German gasoline production should be cleared up for informational purposes." This old version of the Prosecution's Exh. 26 cannot support the Prosecution's allegation concerning Hitler's promises, neither can the pertinent remark made during Buetefisch's interrogation

(Exh. 29), which was again submitted in the evidence for Dr. Gattineau, as Document Gattineau No. 45, Exh. 57. It is shown by this that "Bosch had to argue with the press of many parties, who had made assaults against a development of the production of synthetic fuel". Dr. Buetefisch reported to Geheimrat Bosch, as a result of the conference, that Hitler had promised "to stop attacks of his press against synthetic gasoline" (Exh. 29). Exh. 30, i.e. an interrogation of Prof. Krauch, also confirms the fact that the purpose of the visit was to stop the press attacks. The last document but one quoted in the Trial Brief of the Prosecution (Page 33), Exh. 31, which is rather questionable as regards its probative value - it is an unsworn statement of the defendant Jachno - is also no proof for the Prosecution's allegation, this document is rather a critical comment on the gasoline production of the I.G. with regard to its profitability.

As the last document in this series the Prosecution, during the cross-examination of Buetefisch, has used the draft of a laudatory publication (Exh. 1977) as . The description of Hitler's visit is embellished with such a poetical licence that even the most simple facts do not correspond to the truth. Dr. Buetefisch (Page 8872 of 10 March, afternoon session) , as well as Dr. Gattineau, (Page 12199 of 23 April, afternoon session) commented in detail on this draft, which was written in 1941 by a person who was not a member of the I.G. staff, and was never published. In this connection I should like to refer moreover to the two affidavits of Koppe and Gieson (Buetefisch 170, 171)

For the sake of an unambiguous clearing up of all the facts, the Defense submitted the following evidence in

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Document Book III and Supplements I and II for Dr. Gattineau:

1. Exh. Gattineau 50, Doc. No. 44, Cross-examination Mulert,
2. Exh. Gattineau 51, Doc. Buetelesch 75, Affidavit Petri,
3. Exh. Gattineau 52, Doc. Buetelesch 196, Affidavit E.E. Flecher
4. Exh. Gattineau 53, Doc. No. 45, Affidavit Kubaka,
5. Exh. Gattineau 55, Doc. Schmitz, 6, Affidavit Buschor,
6. Exh. Gattineau 56, Doc. Schmitz 4, Affidavit Kalle,
7. Exh. Gattineau 57, Doc. No. 46, examination Buetelesch,
8. Exh. Gattineau 58, Doc. Buetelesch 31, Affidavit Mulert,
9. Exh. Gattineau 59, Doc. No. 47, Affidavit Roehenberg,
10. Exh. Gattineau 60, Doc. No. 48, Excerpt from VB (Voelkicher Beobachter): Press attack,
11. Exh. Gattineau 61, Doc. No. 49, Affidavit Roehenberg,
12. Exh. Gattineau 62, Doc. No. 50, Affidavit Hederich,
13. Exh. Gattineau 63, Doc. No. 51, Excerpt from VB: press attack.
14. Exh. Gattineau 64, Doc. No. 52, Excerpt from VB: press attack
15. Exh. Gattineau 49, Doc. No. 43, Affidavit Dr. Gattineau (rectification),
16. Exh. Gattineau 54, Doc. No. 101, Excerpt from the minutes of the Commercial Committee: self-sufficiency
17. Exh. Gattineau 185, Doc. No. 107, Affidavit Baacke,
18. Exh. Gattineau 186, Doc. No. 108, Excerpt from "Der Fuehrer" press attack,
19. Exh. Gattineau 187, Doc. No. 109, Affidavit Neuhaus with an excerpt from "Rote Erde": press attack,
20. Exh. Gattineau 38, Doc. No. 27, Excerpt from the minutes of Commercial Committee: appointment to Prekurist,
21. Exh. Gattineau 189, Doc. No. 111, Party index card Gattineau,
22. Exh. Buetelesch 170, Doc. Buetelesch 3, Affidavit Koppo, supplement I to Volume IV Buetelesch,
23. Exh. Buetelesch 171, Doc. Buetelesch 4, Affidavit Bieser, Supplement II to Volume IV Buetelesch,
24. Exh. Gattineau 33, Doc. No. 31, Affidavit Kritzer.

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Moreover, the Defense interrogated the following witnesses with regard to this complex:

1. Prof. Krynck, Page 5429 ff. of 16 January, afternoon session,
2. Dr. Schneider, Page 7451, ff. of 20 February, morning session,
3. Dr. Buefisch, Page 8861 ff of 10 March, afternoon session, Pages 8663 - 8666 of 8 March, afternoon session, pages 8882 - 8891 of 10 March, afternoon session, and Page 8937 ff of 11 March, morning session.
4. Dr. Gattineau, Pages 12196/12205 of 22 April, afternoon session, Pages 12289 - 12291 of 23 April, afternoon session, and pages 12310 - 12312 of 23 April, afternoon session.
5. Prof. Gerlach, Page 8956 of 11 March, afternoon session, Page 8945 of 11 March, morning session.

The following facts result from the evidence of the Defense:

1. In 1932 continuous press attacks against the IG (Exh. 54, 51, 52, 53, 54), particularly against the production of synthetic gasoline (Exh. 59, 60, 185, 186, 187, Gerlach, Buefisch, Gattineau, Krynck, Schneider), were made by the National Socialist press, then, f.i. by the National Socialist newspapers "Voelkischer Beobachter", "Rote Erde", "Der Fuehrer", etc..
2. When a press visit, instigated by IG-Farben of all parties and their press representatives to Leuna, with inspection of the plant and instructive lectures (Exh. 185, Buefisch, Schneider, Gattineau), did not silence these attacks, especially those on the part of National Socialists, Geheimrat Bosch made up his mind in the autumn of 1932 to send 2 of his co-workers to Hitler for the purpose of giving information and of achieving, if possible, that these attacks in the NS press against the gasoline program of the IG be stopped (Buefisch, Gattineau).
3. Dr. Buefisch as the gasoline expert of the IG and Dr. Gattineau as the then head of the Press Bureau of the IG

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were selected by Geheimrat Bosch for this mission (Bustofisch, Gattinoni).

4. According to the wishes of Geheimrat Bosch, Dr. Gattinoni contacted his former teacher, University Professor Haushofer, Munich, who, as a war comrade of Hess, arranged the visit with Hitler (Gattinoni).

5. The part played by Dr. Gattinoni during the visit itself was passive, Dr. Bustofisch made a short report on the synthetic gasoline program of the IG. Hitler gave long explanations about motor highways and Germany's motor vehicle production and finally promised that the attacks of the NS press against the gasoline production of the IG would be stopped (Gattinoni, Bustofisch).

6. During this visit the granting of a protective import duty on gasoline was not mentioned. This could not have been possible since a protective duty existed already a long time before (1931), which, besides, was not changed until 1937 (Krauch, Bustofisch, Schneider, Gattinoni).

7. Other promises to support the gasoline program of the IG in some other way were not made either. (Krauch, Bustofisch, Gattinoni).

8. Dr. Bustofisch and Dr. Gattinoni did not make an agreement with Hitler at that time, nor did they enter into an "alliance" with him, as alleged. They were not at all able to do this in the positions they held at that time - Bustofisch was a Prokurist, Gattinoni not even that (Exh. 53, 55, 56, 28, Gattinoni, Bustofisch, Krauch).

9. On this visit political viewpoints were of no importance. Neither Dr. Bustofisch nor Dr. Gattinoni were at that time members, not even adherents, of the

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NEBAP, On the contrary, Dr. Gattineau was in 1932 a candidate of the conservative People's Party (Buetefisch, Gattineau, Bch. 189, Eq. 33).

10. As regards the negotiations on gasoline between the government of that time and the I.O. which were already in progress since the first half of 1932 and which were only concluded in 1933 by the gasoline contract, it is proved that no reference was made to such an agreement, which allegedly was made on the occasion of the visit paid to Hitler, neither towards the representatives of the government by the Party or the superior authorities, nor by the delegates of the I.O..

R e s u l t s :

1. The Prosecution's allegations on this Count are not proven,
on the contrary
2. the counter-evidence submitted by the Defense as a prosecution
has proved that the allegations of the Prosecution are absolutely
untenable.

II 1 c)

Alleged Key Positions.

A. National Advertising Council of the German Economy:

In Point 34 of the Indictment (P. 19) the Prosecution speaks of key positions in German government agencies and offices which participated in the mobilisation of Germany for the war. Among others, the National Advertising Council of the German Economy has here been named, to which Dr. Gattineau also belonged as a member. The document submitted to prove the activity of the Advertising Council is NI - 1106, Exh. 62, Book III, Engl. P. 131, the report about the Opening Meeting of the Council. Under closer scrutiny, this document speaks for itself. On the witness stand Dr. Gattineau cited a series of excerpts from the speeches at this opening session (P. 12151, 22 April A.M.), which establish beyond a doubt the exact opposite of the Prosecution's assertion.

As proof for the real activity of the Advertising Council the Defense has submitted the following documents:

Gattineau Exh. 20, Doc. No. 5, Affidavit Hunko,

"	"	21	"	"	22,	"	Rechenberg
"	"	22	"	"	23	Excerpt VB, about Advertising Council,	
"	"	23	"	"	24	Excerpt VB, about Advertising Council, Reich	
"	"	24	"	"	25	Excerpt from the Law about the Advertising Council	Legal Gazette
"	"	73	"	"	58	Affidavit Zukowski.	

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In this connection, I furthermore refer to the statements of the Defendant Gattineau (P. 12150 ff., 22 April A.M.), to the testimony of Doering (P. 13532/33, 3 May P.M.), as well as to the testimony of Mann (P. 10284 ff., 31 March P.M.).

From the cited evidence of the Defense it transpires:

1. that the Advertising Council was not a political body (Exh. 20, 22, 23, 24, Doering, Mann).
2. that its tasks were in the nature of industrial advertising, were restricted to a purely advertising sphere, and that any political propaganda was expressly forbidden it (Exh. 20, 21, 22, 23, 24, Gattineau, Mann, Doering).
3. that the Advertising Council was a statutory corporation, had nothing to do with the NSDAP, and that the members of the business management were Reich officials (Exh. 20).
4. that the members, who came from the circles of the industries that were advertising, had no influence on the management of the Advertising Council (Exh. 20).
5. that Dr. Gattineau, since 1939, had not participated in any of the meetings of the Advertising Council (Exh. 73, Gattineau).

II 1 c)

1. The Circle of Experts.

The F-Circle or Circle of Experts for foreign questions, which was established by Funk, the State Secretary of the Ministry for Propaganda is, according to the Trial Brief of the Prosecution, regarded (P. 54a) as an institution, which adapted a program, "to disseminate propaganda abroad, for the purpose of winning these countries over to the "New Germany". As evidence for the activity of the F-Circle and its members the Prosecution submitted the following documents:

Exh. 26, NL-4631, Doc. Bk. III, P. 4,	
" 27 NL-5170	" III P. 6,
" 328 NL-4928	" 14 P. 109,
" 772 NL-6702	" 17 P. 23.

Regarding the two first mentioned documents it is sufficient to refer to the statements under II 1 b, according to which document Exh. 26 cannot be considered proper evidence. This is also shown by the rescission of this affidavit (Exh. 27). As regards the affidavit of the witness Dr. Krueger, this constitutes the statement of a man who was not a member of the F-Circle and who therefore lacks sufficient knowledge of this body. During his cross examination (P. 2967/68, 29 October A.M.) the witness, upon remonstrations on the part of the Defense, agreed on the course which was in reality the one adhered to in this activity by this circle of experts. The last Exhibit (772), was an affidavit

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of Dr. Ilgner, has been discussed by Dr. Ilgner in detail on the witness stand (P. 9379, 17 March A.M.). He gives a detailed description of the F-Circle and its members.

To clear up the entire F-Circle complex, the Defense has submitted the following documents:

Gattineau Exh. 18, Ilgner Doc. 82, Doc. Bk. I, Affidavit Ruperti,
 " " 19, Gattineau Doc. 21, Doc. Bk. I, " Knothe,
 Ilgner " 92, Ilgner " 84, " " V, " Filmowski.

Furthermore, I wish to refer in this connection again to the direct examination of Dr. Ilgner (P. 9379, 17 March A.M.), as well as to the statement of Dr. Gattineau (P. 12148 - 12150, 22 April A.M.), and to the cross examination of Dr. Krueger (P. 2987/88 29 October A.M.). These pieces of evidence show the following:

1. The Circle of experts did not conduct any political propaganda outside the country on the contrary it did set itself the task of acting for the benefit of German exports, and of preventing the damage which might be done to the German economy by political propaganda (Gattineau, Ilgner, Exh. 18, 19, Ilgner, Exh. 92).
2. According to the political composition of its membership, the Circle of experts could not be considered a "Nazi Circle", or a body working in a National-Socialist sense (Ilgner Exh. 92).

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3. The Circle of Experts could be regarded as an attempt "to influence the Nazi policy by economic realities and economic reasoning" (Krueger).
4. The Circle of Experts, in 1934 "passed away peacefully" (Krueger), which in itself proves that it was obviously in disfavour with the competent agencies (Gattineau, Ilgner, Exh. 18, Exh. 19).

R e s u l t :

1. The evidence of the Prosecution did not prove the Prosecution's charges.
2. The evidence of the Defense shows that the Advertising Council and the Circle of Experts had nothing to do with acts of preparing, nor of enacting a war of aggression, and that Dr. Gattineau's membership in these two bodies cannot be considered a key position or an important government position.

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II 1 d) The Political Economy Department (Wipo).

A. Connection of Wipo with Questions of Promoting Exports.

The Prosecution asserts that Wipo, as the competent department had dealt with questions of promoting exports. To prove this assertion, it has submitted the following documents:

Exh. 371, NI-5744, Doc. Bk. 16, P. 37,
" 766 NI-5742, " 41 P. 75,
" 763 NI-5728 " 41 P. 57,
" 764 NI-5726 " 41 P. 69.

These documents are in no way suited to support this assertion, since from them facts for the above assertion cannot be obtained in any case. Furthermore, Dr. Ilgner, as well as Dr. Gattineau, have made detailed statements in regard to these documents.

The Defense has submitted the following evidence:

Ilgner Exh. 99, Doc. 90, Affidavit Schlotterer, Ilgner Doc. Bk. VI,
" " 104, " 96, " Diehlmann, " " "

In regard to this complex the following were also heard:

Dr. Ilgner (P. 9278 - 87, 9377-79, 16 March P.M. and 17 March A.M.),
Dr. Gattineau (P. 1221/22, 22 April P.M.),
Dr. Kugler (P. 12556 ff., 27 April A.M.),

as well as

Dr. Frank-Fahle (P. 9790/91, 22 March P.M.),
and during cross examination by the Defense (P. 1995-2000, 14 Oct. A.M.).

The conclusions to be drawn from all this evidence are that:

1. the agency in charge of export promotion was not the Wipo, but rather the Department for the Promotion of Exports,
2. the wipo was only called in occasionally, when it was a matter of trade policies or when inquiries had to be made to official offices,
3. export promotion exists in every country and that this healthy development cannot be looked upon as a crime, as is done in this indictment,
4. German export promotion was "in no way a means of preparation for the war, but rather a means of preventing a military conflict and of ensuring the peace". (Ilgen exh. 90).

B) Alleged Propaganda Activities of the Wipo:

The Prosecution maintains that the Wipo was a propaganda instrument of the IG, for the purpose of making Nazi propaganda. To prove this contention the Prosecution has presented the following documents:

- Exh. 788, NI-4613, Doc. Book 44, Page 102,
- Exh. 800, NI-6488, Doc. Book 45, Page 2,
- Exh. 832, NI-8139, Doc. Book 40, Page 24,
- Exh. 816, NI-1078, Doc. Book 45, Page 138,
- Exh. 807, NI-2785, Doc. Book 45, Page 47,
- Exh. 833, NI-6221, Doc. Book 46, Page 29

in connection with

- Exh. 1612, NI-6073, Doc. Book 46, Page 93a,

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The first document of this series, exh. 788, which deals with the establishment of a news agency in Buenos Aires, shows that in this matter the Wipo had to limit itself exclusively to collecting the opinions of the competent official agencies for the sales combine. We can also see from the next document, exh. 800, that the Wipo only had to requisition, from the pertinent agencies, the anti-Communist propaganda material that had been ordered by the official Brazilian agencies through the sales agency of the IG in Rio de Janeiro, and that, to this extent, this was also a normal function of the Wipo. Exhibit 832 does not pertain to my client because he no longer was in charge of the Wipo in 1940. But it is of the same nature as the others mentioned above. Exhibit 816 refers to the news agency, which Dr. Gattineau was no longer head of in November 1937. The second/^{to}last document, exh. 807, which refers to a proposal for a collaboration with the Joy and Work organization (Büro Freude und Arbeit), looks interest, for one reason, because this collaboration was never realized. But this matter, too, was not part of the official duties of the Wipo, otherwise a representative of the Wipo would have participated in this discussion. The so-called Seeborn conference, which is mentioned in exhibits 833 and 1612, has already been dealt with on page 25 of the Closing Brief. It is shown there conclusively that the Seeborn conference was also not a discussion of political propaganda questions.

Dr. Gattineau (pg. 12319 ff. from the afternoon of 22 April) and Dr. Ilgner (pg. 9378 ff. from the morning of 17 March) have made detailed statements concerning the alleged propaganda activity of the Wipo. All of these statements confirm that the Wipo was not connected in any way with Nazi propaganda activities.

Further evidence: (doc. Bk III)

Gattineau Exh. 85, Ilgner Doc. 168, Affidavit Hackemann,

Gattineau Exh. 76, NI 71, Affidavit Dr. Ahmann, Doc. Book III,

Gattineau Exh. 69, Ilgner Doc. 41, Affidavit Terhaar.

C. Alleged Connection of the Wipo with Mobilization Questions:

Another contention of the Prosecution in regard to the Wipo is that it had a major part in making mobilization plans, especially through working on the so-called M-Question (M-Frage).

To prove this point the Prosecution has presented the following documents:

Exh. 250, NI-7621, Doc. Bk. 9, page 55,

Exh. 200, NI-9061, Doc. Book 8, page 30,

Exh. 259, NI-7662, Doc. Book 10, page 39,

Exh. 250, NI-7621, Doc. Book 9, page 68,

Exh. 199, NI-8776, Doc. Book 8, Engl. Page 27,

Exh. 99, NI-2747, Doc. Book 5, page 78.

The first one, exh. 250, refers to the M-Question. The later evidence presented : by the Defense - shows that what is involved here is not mobilization, but rather the classification of the so-called deferred positions (Protecting ~~the~~ personnel from being drafted into the Wehrmacht). As long as the defendant, Dr. Gattineau, was head of the Wipo, this is until 1938, the M-Question was understood to refer, essentially, to classifying the deferred positions.

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Not until 1939 were other questions also included therein. The next exhibit, an affidavit by Dr. Mosak (Exh. 200), proves the contention of the Defense clearly, according to which, as the witness states, the M-Question means: "Initiating measures for the purpose of deferring the personnel in the commercial branch". The next affidavit, exh. 259, also confirms that the Wipo later on only acted as a go-between in the M-Question. The collaboration with Vermittlungsstelle W demanded in exhibits 250 and 199 in this field was never realized, as is also shown in later Defense documents. The last Prosecution document, exhibit 99, which lists still further tasks which were supposed to have been demanded of the Wipo in this connection, is refuted conclusively by the above quoted exhibit 259 (affidavit Dr. Krueger) and by the examination of Dr. Gattineau (page 12225 from the afternoon of 22 April).

The Prosecution has presented various documents in connection with this whole question:

Gattineau Exh. 70, Doc. 50, Excerpt cross examination Dr. Krueger,
 Gattineau Exh. 73, Doc. 58, Affidavit Lukowski,
 Gattineau Exh. 78, Doc. 63, cross examination Dr. Gorr,
 Gattineau Exh. 80, Doc. 64, cross examination Frank-Fahle,
 Gattineau Exh. 79, Ilgner Doc. 47, Affidavit Dr. Gorr,
 Gattineau Exh. 81, Doc. 65, cross examination Kuepper,
 Gattineau Exh. 82, Doc. 66, cross examination Kuepper,
 Gattineau Exh. 83, Doc. 67, cross examination Kueppper,
 Gattineau Exh. 84, Doc. 104, minutes of Commercial Committee.

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Besides this, the following testified on this question on the witness stand:

Dr. Gattineau (page 1222 from the afternoon of 22 April).

Dr. von der Heyde (page 12397 from the morning of 26 April).

Mann (page 10336 from the morning of 1 April).

Ilgen (page 9276 ff. from the afternoon of 16 March).

A summary of the evidence submitted by the Defense shows that:

1. the Wipo limited itself exclusively to pure liaison and auxiliary functions so far as the M-Question was concerned, (Exh. 70).
2. until the end of 1936 - Dr. Gattineau was head of the Wipo until that date - the M-Question consisted essentially in working out the deferment classifications, (exh. 80, 81, 82, 83), which was a logical consequence of the introduction of universal military training.
3. no mobilisation plans were evolved in connection with the M-Question, which is also shown by Gattineau exhibit 84, according to which the M-Question was handled, even after the beginning of the war, by classifying the deferred positions.
4. there was no connection in reference to this question with the Vermittlungsstelle W, but that both agencies had separate tasks within the IG. (exh. 78, 79).
5. all the activities of the Wipo in this special field did not justify the conclusion that a war of aggression was intended (Gattineau, Ilgen).

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D. Aligned Espionage Activities of the Wipo.

The Prosecution claims that the Wipo had been an important instrument with which the IG had carried out espionage. The following documents are offered by the Prosecution as proof thereof:

Exh. 840, NI-9512, Doc. bk. 46, page 89,

Exh. 841, NI-10558, Doc. Book 46, Page 94,

Exh. 154, NI- 6658, Doc. Book 5, Page 121,

Exh. 868, NI-717, Doc. Book 47, Page 39.

So far as the first and second exhibits are concerned, they show that Dr. Gattineau was acquainted with Major Bloch of the Counter Intelligence Corps. The Defense does not contest this; Later Defense material shows that this acquaintance was a purely personal one, which was the result of their common participation in the liberal Hegemana Circle. It is also not contested that Dr. Gattineau now and then made articles from newspapers available; but these had nothing at all to do with counter intelligence activities, but were made available for purely personal reasons. Exhibit 841 contains an erroneous presentation in regard to the transfer of Dr. Gattineau's connection ^{with} Major Bloch to Dr. von der Heyde. Since his acquaintance ^{with} Major Bloch was purely a friendly and a personal one, there could be no question of a transfer of this friendship to Dr. von der Heyde - in an official connection. Von der Heyde was one of the counter intelligence agents of the I.G. Bloch was referring to von der Heyde in his capacity as counter intelligence agent and not as a junior executive (Referent) of the Wipo.

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As Counter Intelligence Officer However, Heyde was not subordinated to Dr. Gattineau (Page 12408 ff of 26 April morning session.)

The Defense Counsel has submitted the following documents pertaining to this complex:

Gattineau Exh. 121, Doc. 15, Affidavit Dietrich,
Gattineau Exh. 76, Doc. 71, Affidavit Dr. Ehrmann,
Gattineau Exh. 86, Ilgner Doc. 69, Affidavit Schwarte,
Gattineau Exh. 87, Ilgner Doc. 67, Affidavit Ruperti.

Furthermore the following were heard on the witness stand pertaining to this complex:

Dr. Ilgner (Page 9507 of 16 March morning session),
Dr. Gattineau (Page 12216 of 22 April afternoon),
Dr. von der Heyde (Page 12408 of 26 April morning),
Dr. Overhoff (Page 5798 ff. of 26 January afternoon).

This is the result of the evidence as submitted by the Defense:

1. that the Wipo had nothing to do with espionage and also did not collaborate with the Counter Intelligence of the OKW (Exh. 76, 86, 87).
2. that the connection of Dr. Gattineau as the former director of the Wipo with Major Bloch of the Counter Intelligence, who was a member of the Canaris group and political opponent of National Socialism resulted from a purely personal friendship and had nothing to do with the official collaboration between IG and OKW-Counter Intelligence. (Exh. 12).
3. that a prohibition existed at the I.G. against putting the apparatus of the sales combines and other organisations within the IG at the disposal of the Counter Intelligence of OKW (Exh. 86, 87, Gattineau, Overhoff).

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4. that IG already for reasons of its export could not collaborate with the Counter Intelligence (Exh. 74).

B. Alleged collaboration with Party-agencies:

The Prosecution claims that Wipo not only collaborated with the Berlin authorities but also with Party agencies, and especially that it maintained contact with the A.O. (Nazi Party abroad). To prove this claim the Prosecution has submitted 4L-2788, Exh. 379, Doc. Book 14, Page 117. To this the following is to be said. The document presents a letter which Herr Walbel wrote 1942 to the AO and with which he introduced the Wipo as liaison agency for the mutual passing on of questions. 1942 Dr. Gattineau had long ceased to direct the Wipo. (see also Closing Brief Page 54/56).

The following precautionary counter-evidence was submitted by the Defense:

Gattineau Exh. 65, Doc. 53, Affidavit Bohle,

Gattineau Exh. 66, Doc. 102, (Supplement I) EA-protocol

Gattineau Exh. 67, Doc. 103 (Supplement I) EA-protocol

as well as

Dr. Gattineau (Page 12208 of 22 April afternoon)

and heard the witness:

Overhoff (Page 5787 ff. of 26 January morning)

The evidence has shown clearly that

1. the communication with Party agencies, if at all, was conducted locally by the individual works managements and sales combines, since the Party apparatus was built up regionally and therefore any contact on a central level ^{was} not even possible (Dr. Gattineau).

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2. that Kommerzienrat Waibel had ^{to} maintain ^{the} contact to AO and that Wipo was only since 1942 included in an auxiliary function, at a time when Dr. Gattineau did not direct Wipo any more (Exh. 55, 56, 57).

F. Foundation and actual activity of the Wipo.

The Prosecution claims that Wipo was founded shortly after the seizure of power and through its establishment it was thought to strengthen the influential position achieved with Hitler, and that Dr. Gattineau was appointed director of the Wipo because of his good relations to the Nazi Party. (Trial Brief I page 5.)

The Prosecution further claims that Wipo was the only agency through which communication with the authorities was effected.

Prosecution documents:

Exh. 842, Doc. 7527, Book 46, Page 96,

" 363, NI-4959, Book 14, page 11,

" 420, NI-5746, Book 20, Page 6,

" 835, NI-1085, Book 46, Page 39

" 547, NI-7241, Book 26, Page 21,

" 1815, NI-11711, Book 30, Page 48,

" 2026, NI-7982, subsequently submitted at cross examination

Ilgnor.

In reference to the two first Exh. 842, 363, Dr. Gattineau (Page 12207 ff. of 22 April afternoon) has testified on the witness stand in detail, as well as Dr. Ilgnor (Page 9500 ff of 18 March morning). To deduce from their contents that it was the sole agent of communication with authorities, is wrong. Exh. 420 shows a normal intermediary function of the Wipo, for the channeling to the competent IG-agency, hereby the inquiry had negative results, since no report by Neubacher was available (Gattineau Page 12215 of 22 April afternoon).

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Regarding the following Exh. 835 Dr. Eugler has testified in detail on the witness stand (Page 12548 of 27 April afternoon). Also here the WIPO is seen in a normal intermediary function. Exh. 547 shows that a visit at the Army Ordnance Office took place. Dr. Gattineau has testified that a technical agency prior to 1935 requested the arranging of a visit, and was accompanied. This was an individual case. After 1935 this became the task of Vermittlungsstelle W. A similar case is the event in Exh. 1815, also concerning a matter which since 1935 has been a task of Vermittlungsstelle W. Probably both matters are mistakes, which occurred often during the first time of the Wipo. At that time the competence was not well regulated yet. Beginning 1935 such occurrences were clearly within the competence of Vermittlungsstelle W. Regarding the last document (Exh. 2026) it is to be said that Ilgner chose this form of a purely formal supervision in order to assure Dr. Gattineau's reinstitution into this office in case of his possible return from Pressburg. The responsible direction remained with Dr. Torhaar, beginning 1939, as also is revealed by the document itself. Dr. Gattineau has never exercised this supervision.

Contrary to that may I refer to the following evidence of the Defense.

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Gattineau Exh. 27, Ilgen Doc. 40, emergency Ka-protocol Wipo-foundation,
Gattineau " 56, Doc. 54, Diagram, cost chart Wipo
Gattineau Exh. 59, Ilgen, Doc. 46, Affidavit Torhaar,
Gattineau Exh. 70, Doc. 55, cross examination Dr. Krueger,
Gattineau Exh. 71, Doc. 56, Affidavit Eichner,
Gattineau Exh. 72, Doc. 57, Affidavit Hans Schaevern,
Gattineau Exh. 73, Doc. 58, Affidavit Zukowski,
Gattineau Exh. 74, Doc. 59, Affidavit Duisberg,
Gattineau Exh. 75, Doc. 60, Cross examination Frank-Fahle,
Gattineau Exh. 76, Doc. 61, affidavit Hermann,
Gattineau Exh. 77, Doc. 62, Affidavit Hoffmann,
Direct interrogation Dr. Gattineau (Page 12206 ff of 22 April afternoon),
Interrogation Dr. Kugler (Page 12548 of 27 April afternoon)
Interrogation Dr. Ilgen (Page 9600 ff of 18 March morning)
From that follows:
1. that the Wipo was established in September 1932, that is one half
year prior to seizure of power by the National Socialists (Exh. 27,
70, 71, 74, 75, 77).
2. that the establishment of Wipo was in accordance with the wishes of
Gehelmar Bosch, to avoid duplicity of functions in applying to the same
authority by various IG agencies, and in order to have a liaison agency
at Berlin to which IG agencies as well as official authorities could turn.
(Gattineau, Torhaar, Exh. 72, 71, 59).

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3. that the major function of the Wipo was an auxiliary one, to deal with commercial-policy questions for the sales combines, but not with technical matters, which belonged to the competence of Vermittlungsstelle W (Exh. 69, 71, 74, 75, 77).

4. that Wipo was not the only agency of the IG for communication with authorities, but that for instance the Central Finance Administration communicated with the Reichsbank, the legal departments with the Patent Office, the Tax Departments with the Ministry of Finance, the Employee Relations Department with the Ministry of Labor, the Vermittlungsstelle W with Reichsauthorities, Four Year Plan and military authorities, Wipo mainly handled official communications with the Reich ministry of Finance (Dr. Gattineau).

5. that Wipo did not take any part in the field of the Four Year Plan nor in the field of armament nor in foreign currency matters. (Exh. 69, 71, Gattineau).

6. that Dr. Gattineau was not appointed director of the Wipo on the ground of political considerations, but rather as director of Press Bureau and the commercial policy office, both of which agencies together with the commercial-economic department constituted the Wipo.

7. that in 1935 Dr. Gattineau relinquished the direction of the Press Bureau office and at the end of 1939 the direction of Wipo.

8. that Wipo was one of the smallest departments of Nr 7 (in 1938 it had 12 skilled specialists), (Gattineau Exh. 68).

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9. that the development of the expenses of the Wipo, which decreased in 1933, was not synchronised with the development of National Socialism and that the later slow rise in costs was only in conformity with the inflation of the Civil service machinery of the State. (Exh. 68, Gattineau).

R e s u l t s :

1. The claims made by the Prosecution are not substantiated by the evidence offered.
2. The evidence submitted by the Defense proves that the activity of the Wipo, as well as that of Dr. Gattineau in the Wipo, does not constitute preparation for or participation in an aggressive war.

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II 2).

Questions in regard to Austria:

Despite the fact that the Court, in its decision of 22 April, decided that the acts of the defendants here on trial in regard to Austria do not fall under Count II and III of the Indictment (Page 12194 of 22 April P.M.) and therefore become eliminated from any further study, it is necessary in connection with Count I of the Indictment (Crimes against Peace) to illuminate the Austrian affair and Dr. Gattineau's position therein.

a) Dr. Gattineau's tasks in Austria.

The Prosecution maintains that, due to his Party affiliations, Dr. Gattineau was especially fit to handle the negotiations in Austria, that he was deputy for Dr. Fischer, the I.G. plenipotentiary in Austria, and that he was also otherwise involved in the negotiations in Austria during and after the absorption. The following documents were submitted by the Prosecution as evidence to this effect:

Exh. 1105, NI-11370, Doc. Book 53, Page 115,

Exh. 1064, NI-10421, Doc. Book 52, Page 41,

Exh. 1075, NI-4456, Doc. Book 52, Page 101,

Exh. 1059, NI-9289, Doc. Book 52, Page 54,

Exh. 2137, NI-14504, subsequently submitted in the cross-examination Gattineau,

Exh. 2138, NI-14506, subsequently submitted in the cross-examination Gattineau,

Exh. 1089, NI-8588, Doc. Book 53, Page 17,

Exh. 1067, NI-10998, Doc. Book 52, Page 47

Exh. 1093, NI-8632, Doc. Book 53, Page 85,

Exh. 2139, NI-8578, subsequently submitted in cross examination

Cross examination Prof. Krauch (Page 5453 of 16 January P.M.)

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Exhibit 1106 is an affidavit by Dr. Krueger. The statements contained in this affidavit referring to Dr. Gattineau could not be substantiated by the witness during the cross examination (Page 2989 ff of 29 October A.M.). On being questioned as to the supposed Party connections of Dr. Gattineau in Austria he mentioned Bilgeri, the former chief of the Ruffelsberger office staff, the State Commissioner for Private Economy in Austria. Dr. Gattineau knew Bilgeri from a ski race held while they were at college, as was deduced during the direct examination of Dr. Gattineau. (Page 12233 of 22 April P.M.) Dr. Krueger was unable to mention any additional Party connections of Dr. Gattineau. The next Exh. (1064), an affidavit by Dr. Holmut Wosack, already has very little value as evidence due to the fact that the witness never dealt with matters in Austria and that therefore he bases his statements, which he was also unable to substantiate during his cross examination, merely on assumptions and hearsay. (Page 2880 of 28 October A.M.). It is already obvious from Exh. 1075 itself that Dr. Gattineau did not take the measures in Austria, by reason of which the recall of the commissioners in the I.G. plants was to be accomplished, until months after ^{the absorption had taken place.} As shown already by the document itself, Dr. Gattineau was not the man in charge but had only been sent to Austria in this matter as an assistant to Dr. Ilgner. His position as deputy for Dr. Fischer, established in Exh. 1069, is not a permanent position as deputy, but only extended over a period of 3 weeks while Dr. Fischer had to take part in army manoeuvres. In addition, it is shown by the document that for commercial matters, Dr. Ilgner and Dr. Fischer, and for technical matters Dr. Kuehne and Dr. Buetefisch were responsible in Austria.

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The two Exhibits, 2137 and 2138, have to be discussed together. My client discussed this correspondence during his cross examination (Page 12303 of 23 April P.M.). Dr. Gattineau is unable to recollect this matter. The document itself shows that Dr. Buhl, who at that time did not participate in the conferences in Austria, knew of these events about which he writes to Kuehne, only from hearsay. If there is no mix-up of names, then it becomes clearly evident from the reply which Dr. Kuehne writes to Buhl, (Exh. 2138) that the I.G. was so little indebted to Dr. Bilgeri that it was able to refuse his request outright. Thus the opposite of the opinion advanced by the Prosecution, which submitted the document in order to prove how indebted the I.G. was to Dr. Bilgeri for his services in Austria, is proven.

The assertions made in the Meyer-Wegelin Affidavit (Exh. 1089) in regard to the point of view taken by the Four Year Plan are refuted by a large amount of evidence submitted by the Defense, as well as by the examination of Prof. Krausk, Kuehne, Ilgner, Haefliger and Gattineau. It is shown that the arguments of the Four Year Plan were used as window dressing and that the plans of the Danau-Chemie had nothing to do with the Four Year Plan. The assertion that during the negotiations in Budapest, the Jewish character of the enterprise played a role, is also refuted by the evidence submitted by the Defense, as well as by the statements made by Gattineau and Ilgner.

The next exhibit (Exh. 1093) is a preliminary draft of the results reached in Budapest by Dr. Mueller and Dr. Ilgner on one side and Erwin Philipp and Philipp-Weiss on the other. My client has co-signed this memorandum. Defense evidence offers proof to the effect that these Budapest negotiations in July 1938 concluded

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a proper agreement which took care of the interests of all the participating parties.

The decisive conclusion at which Jehan arrives in his affidavit (Exh. 1087), could not be maintained by him. He had to admit that during the negotiations with the Kreditanstalt for the purchase of the Skoda-Wetzlar shares, no pressure had been exerted by the I.G.. (Page 8842 ff. of 6 February A.M. Commission). In regard to the statement made by Prof. Krauch, let me point to the direct examination of Dr. Gattineau (Page 12240 of 22 April P.M.) according to which Bosch requested him to visit Prof. Krauch during his occasional visits to Berlin in order to inform him "about what was going on down there".

In regard to the parts of the affidavit referred to by the Prosecution in the cross examination concerning Fischer, Seyss-Inquart and Koppler, I refer to pages 11 and 19 of the Closing Brief. The statement of Dr. Gattineau in regard to this (Page 12304 and 12309 of the 23 April P.M.).

In regard to Dr. Gattineau's work in Austria, the defense submitted the following evidence:

Gattineau Exh. 29, Doc. 28, Affidavit Orosen,
Gattineau Exh. 88, Doc. 4, Affidavit Platzer,
Gattineau Exh. 89, Doc. 3, Affidavit Backhofer,
Gattineau Exh. 94, Doc. 176, Bustofisch, Affidavit Henning,
Gattineau Exh. 102, Doc. 72, Affidavit Geislinger,
Gattineau Exh. 103, Doc. 73, Affidavit Thier,

as well as

Direct Examination Ilgnor (Page 9529 ff of 18 March A.M.)
Direct Examination Kuehne (Pages 10153 ff of 30 March A.M.)
Direct Examination Haefliger (Pages 9143 ff of 15 March P.M.)
Direct Examination Gattineau (Pages 12233 ff of 22 April P.M.)

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1. Dr. Gattineau was on a trip to Africa previous to the absorption of Austria, while this absorption was in progress and also afterwards, so that it was impossible for him to participate in the purchase negotiations for the Skoda-Wetzler plants going on at that time (Exh. 29 Gattineau).
2. Not until May 1938, that is 2 months after the absorption, was he sent to Austria to assist Dr. Ilgner in the task of accomplishing the recall of the Commissioners in the I.G. plants (Gattineau, Ilgner).
3. The following gentlemen were designated by the Vorstand of the I.G. to take care of matters concerning Austria:
Technical matters were to be cared for by Dr. Kuhnke and Dr. Buettfisch.
Matters of a general commercial nature by Dr. Ilgner, Dr. Fischer, at that time exclusively an employee of the I.G. (see page 11 of the Closing Brief), was appointed to the post of Plenipotentiary of the I.G. for Austria by the Commercial Committee. Dr. Gattineau merely acted as Dr. Fischer's deputy while he took part in the military maneuvers, that is for 3 weeks. Later on he received orders from Dr. Ilgner to assist Dr. Fischer in his organizational tasks in establishing the Donau-Chemie (Gattineau, Ilgner).
4. In this connection Dr. Gattineau sometimes also had to negotiate on Fischer's orders with the authorities in regard to business matters. Thus, for instance, after the transaction had been approved in principle by the government authorities in charge (6 June 1938), he once had to confer with the then Reich Governor of Austria, Seyss-Inquart, who wanted to be kept informed about the reconstruction plans of the I.G. in the Donau-Chemie.
5. Up to the year 1941 Dr. Gattineau was not on the board of directors of any I.G. subsidiary in Austria.

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6.) Dr. Gattineau became member of the Vorstand of Donau-Chemie as late as in 1941. It was his task to deal with commercial and financial matters. He was Betriebsfuhrer of the administrative bureau Vienna of the Donau-Chemie. This Vienna bureau had not to deal with the utilization of labor in the plants. Betriebsfuhrer of the main plant Moosbierbaum, was Henning, and Hackhofer the Betriebsfuhrer of the other plants (Exh. 102, 103, 88, 89, and 94).

b. Significance of the production of the Donau-Chemie:

To this question the Defense have submitted the following evidence

Gattineau Exh. 89, Doc. 3, Affidavit Hackhofer,

Gattineau Exh. 109, Ilgner doc. 136, Affidavit Hackhofer,

Gattineau Exh. 100, Haefliger Doc. 40, Affidavit Ehrl,

as well as

direct examination Gattineau (pp. 12233 foll., of 18 March, a.m.)

direct examination Kuehne (pp. 10153 foll., of 30 March, a.m.)

direct examination Buetafisch, (pp. 8868 foll., of 30 March, p.m.)

direct examination Ilgner, (pp. 9529 foll., of 18 March a.m.)

direct examination Baergin, (pp. 8444/45 of 4 March, p.m.)

From this the following facts emerge:

The Donau-Chemie, formed out of the plants Skoda-Wetzlar and Carbide-Werke Deutsch-Matrei, had nothing to do with the Four Year Plan and armament. The production of the Donau-Chemie plants was a pure peace-time production for the Austrian civilian requirements. (Exh. 88, 89, 109, 100, Gattineau; Kuehne.)

2. The installations for the dehydration of petroleum and the production of magnesium were no concern of the Donau-Chemie, but were started only in war-time, that is after 1941, by the I.G. on the basis of impositions made by the state, and operated, as far as they were completed (Kuschn, Gustafsch, Burgin, Gattineau.)

3.) At the time of the purchase negotiations in July 1938, the idea of erecting such installations was not yet in being.

C. Purchase negotiations Skoda-Wetzlar and concern re-organization of the Karbidewerke Deutsch-Metrol AG.

To this question the following evidence has been submitted by the Defense:

Evidence:

Gattineau Exh. 88, doc. 4, Affidavit Plattner,
Gattineau Exh. 89, doc. 3, Affidavit Haackhofer,
Gattineau Exh. 90, doc. 2, Affidavit Demoker,
Gattineau Exh. 91, Ilgner Doc. 147, Letter of Seiller,
Gattineau, Exh. 95, Haefliger doc. 39, Affidavit Schiller,
Gattineau, Exh. 96, Ilgner doc. 135, Affidavit Raffelsberger,
Gattineau Exh. 97, doc. 1, Affidavit Raffelsberger,
Gattineau Exh. 98, doc. 69, cross-examination Schen,
Gattineau Exh. 99, doc. 70, Affidavit Kuppler,
Gattineau Exh. 100, Haefliger doc. 40, Affidavit Kohrl
Gattineau Exh. 104, doc. 74, Affidavit Schmidt,
Gattineau, Exh. 106, Doc. 76, Affidavit Bergemann,
Gattineau, Exh. 107, doc. 77, Affidavit Schmidt,
Gattineau, Exh. 108, doc. 78, cross-examination Mayor-Mogelin
Gattineau, Exh. 109, Ilgner doc. 136, Affidavit Haackhofer,

as well as

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direct examination Ilgner (pp. 9529 foll., of 18 March, a.m.)
 direct examination ~~Ilgner~~ (pp. 10153 foll., of 30 March a.m.)
 direct examination Gattineau (pp. 12233 foll., of 22 April, p.m.)

As far as the nature of the negotiations relating to Skoda-Wetzler and Carbid-Werk Deutsch Metrol are concerned, the following facts have been proved by the evidence submitted by the Defense:

1. The negotiations about the purchase of the majority of the Skoda-Wetzler shares, which had been started already before the Anschluss, were concluded after the Anschluss by fixing an adequate purchasing price without any pressure. The responsible negotiator on the part of the I.G. was Dr. Fischer (Exh. 81, 90, 86, 96, 97, 98, 99, 100, 104, 105, Gattineau, Ilgner.).
2. The Budapest negotiations in July 1938 between the DAG Treisdorf and the I.G., as well as the Pester Ungarische Kommerzialbank and the A.G. Dynamit Nobel Pressburg, which aimed at the sale of the Austrian participations of the Nobel Pressburg to the DAG Treisdorf and the I.G., represented an internal concern re-organization. The interests of the parties concerned were fully taken into consideration, no sort of pressure was exercised, no unfair argument used and the sales price was proposed by the seller itself, the Nobel-Pressburg, taking into account ^{tax} considerations favorable to it. (Exh. 107, 108, 109, Gattineau, Ilgner, Fischer.)

Result:

- 1.) The evidence presented by the Prosecution is not capable of supporting the contentions of the Prosecution with regard to the Austria complex.
- 2.) On the contrary, the Defense has proved that the Skoda-Hotstar and Deutsch-Matrei transactions were correct business deals, which had nothing to do with the preparation of a war of aggression or the co-operation in such a war.

II 3)

The AG Dynamit Nobel Pressburg,

With regard to Pressburg the Prosecution contend that Dr. Gattineau was in charge of one of the biggest explosive factories of the IG in the occupied territories and that he participated there in the procurement and unlawful use of foreign workers and in the spoliation.

The Prosecution has completely failed to submit any evidence for this quite untenable contention.

As a precautionary measure, the Defense has submitted to this complex the following documents as additional evidence:

Gattineau Exh. 110, doc. 82, Affidavit Dr. Gattineau with graph,
Gattineau Exh. 113, doc. 81, Affidavit Dr. Carl Meyer,
Gattineau Exh. 116, doc. 84, Affidavit Dr. Fischer,
Gattineau Exh. 117, doc. 85, Affidavit Knoech,
Gattineau Exh. 118, doc. 86, Affidavit Koeppeke,
Gattineau Exh. 119, doc. 87, Affidavit Fantsel,
Gattineau Exh. 120, doc. 88, Affidavit Weiss,
Gattineau Exh. 121, doc. 89, Affidavit Kayn,
Gattineau Exh. 122, doc. 90, Affidavit Soydl,
Gattineau Exh. 124, doc. 91, Joint Statement,
Gattineau Exh. 123, doc. 92, Affidavit of members of the Pressburg
plant,
Gattineau Exh. 125, doc. 93, Affidavit Sprinzel,
Gattineau Exh. 126, doc. 94, Statement Stephan.

Furthermore, the following persons were examined on the witness stand about this complex as a precautionary measure:

Dr. Gattineau (pp 12257 foll., of 23 April, a.m.)
Dr. Ligner (p. 9636 of 19 March a.m.)
Dr. Kuehne (p. 10229 of 31 March, a.m.)

Dr. Buetefisch (Page 8861 from the forenoon of 10 March)

Dr. Gajewski (Page 8290 from the forenoon of 3 March).

The total evidence results in the following facts:

1. From 1 January 1939 until March 1945 Dr. Gattineau was one of the managing directors of the AG Dynamit Nobel, Pressburg. This firm was located in Slovakia, which was a Sovereign State and had been internationally recognized.
2. The Works at Pressburg were occupied with the wholesale manufacture of chemical products. Military explosives were not produced. The main products were cellulose, sulfuric acid, carbon disulphide, and explosives for mining operations.
3. Neither Prisoners of War, nor foreigners, nor concentration camp prisoners were employed in the Pressburg works.
4. Dr. Gattineau did not participate in the procurement of forced labor.
5. In Pressburg no spoliation took place, but rather the contrary.
6. A comprehensive rebuilding was carried out. The number of persons employed was increased from 300 to 2000.
7. The newly created and extended production was engaged in a purely peacetime production for Slovakian civilian requirements.
8. An exemplary social program was carried out through the initiative of Dr. Gattineau, for the purpose of improving the social situation of the workers and employees.

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9. Also the subsidiary companies of the Pressburg Works, located in the South East, were occupied only with a peace time production for their countries. They did not make their production a part of the "War Machine" of the "German Reich". The projects initiated and carried out by Pressburg in the South East also benefited the peace time production exclusively.

CONCLUSION:

The precautionary evidence of the Defense shows that the activity of Dr. Gattineau at Pressburg had nothing to do with the preparations for an aggressive war, or the participation in the same, and that furthermore it can not be considered as Spoliation and Looting in the meaning of Count II of the Indictment, and that finally it cannot be the basis for any responsibility in the sense of Count III of the Indictment.

4. To the further allegations of knowledge made by the Prosecution.

The Prosecution claims that all defendants had knowledge of the forced labor program (page 3188), of the medical experiments in the concentration camps (page 4337), as well as of the fact that human beings were being exterminated in the concentration camps (Trial Brief III, page 37 ff). The Prosecution has presented no proof for this allegations as far as Dr. Gattineau is concerned, on the contrary the Prosecution itself restricts its allegations of knowledge as far as the four defendants who were not members of the Verstand are concerned - Dr. Gattineau being one of these, O in as much as for these four it concedes "the possibility of an exception" regarding the knowledge of the alleged events (page 189 of 29 August 1947). On the witness stand Dr. Gattineau discussed all these questions of knowledge and denied them. His testimony remained uncontradicted. It results from his direct examination (page 12230 of the forenoon of 23 April) that Dr. Gattineau had no knowledge of either the forced labor program, the medical experiments, nor the extermination of human beings in the concentration camps.

1. The Prosecution has submitted no evidence for the allegation of knowledge on the part of Dr. Gattineau regarding the above presented events.
2. The evidence presented by the Defense discloses that Dr. Gattineau had no knowledge of these events.
3. To the conspiracy allegation of the Prosecution
Regarding the conspiracy allegation of the Prosecution, Count V of the Indictment, for which the Prosecution has submitted no evidence whatsoever pertaining to Dr. Gattineau, the Defense as a precautionary measure states the following facts, which are based on the examination of Dr. Gattineau:
 1. Dr. Gattineau was not a member of the Vorstand of the IG (page 12281 of the forenoon of 23 April).
 2. He was not a member of the Commercial Committee, he only participated in the meetings on eight occasions during the years 1937 to 1945 as a guest when matters pertaining to his sphere of work were discussed (page 12281 of the forenoon of 23 April).
 3. Dr. Gattineau was not a member of the Working Committee, but until 1935 he participated in the meetings of the Working Committee in his capacity as head of the Press Bureau (page 12146 of 22 April 1948) and
Gattineau Exh. 14, Doc. 17, Cross examination Baessler,
Gattineau Exh.15, Doc. 18, Affidavit Duisburg,
Gattineau Exh.16, Doc.19, Minutes of the Working Committee,
Gattineau Exh. 17, Doc.20, Affidavit Gattineau

4. Dr. Gattineau was a member of only one sub-committee of the IG, i.e. of the South Eastern Committee for his sphere of work (page 12281 of the forenoon of 23 April 1948). This Committee however had no executive, but rather only advisory functions (see Prosecution Exh. 360, NY-5169, Doc. Book 13, page 82).
5. Gattineau was not a member of the Advisor Council to the Enterprise (Unternehmungsbeirat), nor did he participated in any conference of the Betriebsfuhrer (page 12281 of the forenoon of 23 April).
6. Beginning with 1939 Dr. Gattineau had nor direct functions within the IG anymore. The economic positions of Dr. Gattineau, which are mentioned in the Appendix A to the Indictment, refer to such companies in which the IG had invested. Besides the Donau-Chemie these were usually firms which belonged to the combined of the AG. Dynamit Nobel, Pressburg (page 12169 of the forenoon of 22 April).
7. At none of the meetings of the Working Committee, Commercial Committee, and the South Eastern Committee in which he participated were questions discussed which in any way whatsoever were connected with an aggressive war (page 12283 of the forenoon of 23 April).
8. On the witness stand Dr. Gattineau states that he had not conspired with his colleagues for the preparing and carrying out an aggressive war (page 12284 of the forenoon of 13 April).

CONCLUSIONS:

1. The conspiracy allegations of the Prosecution has not been proven by any evidence.
2. The precautionary evidence presented by the Defense shows on the other hand that Dr. Gattineau did not participate in an alleged conspiracy in the sense of the Prosecution.

- END -

Crosby-Bright Hammer
(Bentley)

Case 4
Defense +

MILITARY TRIBUNAL No. VI

CASE No. 6

CLOSING BRIEF

FOR

PAUL HAEFLIGER

presented by his defense
counsel

Dr. VOLFRAN v. MEZLER
Attorney at Law

Nuremberg, 1 June 1948

Henry



I N D E X

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I. The career and the political views of the defendant Paul Baefligor.

Before the Defense considers in detail the Counts of the indictment, it would first like to make a brief appraisal of the evidence which is submitted on the professional career and the political views of the defendant Baefligor. The Defense feels all the more impelled to do this ⁱⁿ as much as the Prosecution has repeatedly submitted questions to the various defendants about their political views, especially about their standpoint on the Jewish Question, and also adduced evidence in this connection.

The Defense Counsel of the defendant Baefligor is of the opinion that the political views of the defendant, in connection with his career, are not directly relevant to the separate Counts of the indictment, because this present trial is not a de-Nazification proceeding, but is based on the accusation of quite concrete criminal acts. The Prosecution is of the opinion, however, that the political views of the individual defendants may also provide general clues to their personal attitudes regarding the criminal acts of which the Prosecution has accused them. For a person who, from his entire inner convictions, was no follower of the Nazi system and who moreover, manifested these convictions outwardly, cannot be considered capable - speaking in very general terms - of having committed the crimes charged by the Prosecution, which - as the Prosecution alleges in its opening statements - were the outcome of an alliance of Farben,

and hence of all the defendants, with the Hitler system and its aims.

The Defense takes the standpoint that the evidence which it has submitted concerning the career and the political views of the defendant Haefliger shows conclusively that Haefliger was not a follower of the Nazi system, but that he was a man guided by democratic principles, who was totally averse to furthering the plans of aggression of the Nazi regime and the spoliation of foreign countries, as well as the slave labor program and the crimes charged by the Prosecution in this connection.

In support of this standpoint the Defense has submitted, as Exhibit 3 in its document book I, the Haefliger Document No. 10 (page 1 in the English and the German), namely, an affidavit by Haefliger in which he describes his career up to 1933. In amplification thereof Haefliger made statements in his "examination in chief", which may be found on pages 9064-9069 of the English transcript and pages 9160-9166 of the German. It is worth mentioning, as an excerpt of these statements, that Haefliger, who is a Swiss citizen, was educated in Switzerland and comes from a home where democratic views prevailed. His father, who lived in Chile for 28 years, was a person of avowed democratic principles and an anti-militarist. Furthermore, his subsequent professional career further strengthened the democratic principles which he had already absorbed in his youth. In 1909 he took up employment with one of the founder firms of the I.G. Farbenindustrie A.G., the Chemische Fabrik

Griesheim-Elektron, where he worked first as a correspondent in foreign languages under his subsequent superior, Director Weber-andres, particularly in the field of the international conventions of the heavy chemical sector, in which he developed himself as a specialist and which remained his special field in Farben until the outbreak of the second world war on 1 September 1939. This activity brought him into constant contact with foreign countries and resulted in Baefliger's spending a considerable part of the year in journeys abroad. This constant contact with foreign countries intensified - as he stated on the witness stand - his predisposition toward peaceful international cooperation, which conforms in general, moreover, with the well-known tradition of a Swiss citizen.

Further, Baefliger did not give up his principles after 1933, as he testified on the witness stand. In the opinion of the defense, this is conclusively proved by the collection of excerpts from the brochure, "Speeches by Consul P. Baefliger on the Swiss national holiday and other occasions before the Swiss Colony in Frankfurt on Main, 1934-1937". These excerpts were submitted in Exhibit 4, Baefliger Document No. 11, Document Book I, page 5 of the English and the German versions. When submitting this document the defense quoted some characteristic sentences from these speeches of Baefliger - to avoid repetition reference is made to pages 9067 and 9068 of the English transcript and page 9184 of the German.

In this connection the defense refers to an affidavit (which is submitted as Exhibit 27, Baefliger Document No. 34, Document Book III,

page 19 of the English and the German versions) by Walter von Aue, formerly "Handlungsbevollmächtigter" in the Huls & Co. Chemicals of Farben; this describes Haefliger as a man who all along had envisioned a union of the European countries in a federal organization of states according to the American pattern. In discussions with foreign partners (according to the affidavit) he repeatedly advocated the idea of a united Europe. Von Aue further says that Haefliger was too much of a cosmopolitan to be susceptible to the Nazi ideology. This in harmony with the fact that Haefliger neither belonged to the NSDAP nor ^{to} its formations or organizations, with the exception of the German Labor Front, in which he became a member through a collective membership, of all the persons employed with the firm - in other words, not through any personal application for membership.

The fact that Haefliger was Swiss Council in Frankfurt on Main from 1934 to 1938 and was appointed Official advisor of the Frankfurt Consulate in the spring of 1945 by the Swiss ambassador in Berlin at the time (English transcript, pages 9074-9076; German pages 9070-9071, of the direct examination), probably speaks unequivocally for his Swiss principles, and thereby for his repudiation of National Socialism.

In this connection the Prosecution submitted, as Exhibit 2004, NI-14662, a letter dated 28 November 1933 from Prof. Dr. C. Bosch to Haefliger in which Bosch gave expression to certain misgivings regarding Haefliger's assumption of the office of Swiss Consul in view of the "negotiations with the German

Ministry of War". To this Haeffliger testified, in his re-direct examination (page 9441 of the English transcript, page 9552 of the German) that it had been erroneously assumed by Prof. Bosch that he had dealt with the Ministry of War in matters designated as secret; he testified that, on the contrary, he had never had knowledge of such negotiations. This testimony by Haeffliger is supported by a statement that Haeffliger had made as early as 9 October 1945 before the interrogator at the time and which was submitted as Exhibit 42, Haeffliger Document No. 49, Document Book IV, page 4 of the English and the German.

The Prosecution, obviously in the attempt to refute the evidence submitted by the Defense concerning Haeffliger's political views, submitted, as Exhibit 20151, NI-14661, a letter dated 11 August 1939 from Dr. Kurt Krueger and Dr. Erich von der Heyde to the Military Economy Staff which mentions the alleged wish of Haeffliger to acquire German citizenship because of his German sentiments, and in which the alleged misgivings, not shared by the Farben Vorstand, about retaining his Swiss citizenship is also discussed. In this connection the Prosecution also submitted, as Exhibit 2016, NI-14663, a letter of 5 June 1939 from von der Heyde to Haeffliger which likewise was concerned with the question of the acquisition of German citizenship, and, as Exhibit 2017, NI-14664, a letter of 30 August 1939 from von der Heyde to Dr. Buhl, to which is annexed a copy of the letter of 11 August 1939 to the Military Economy Staff (Prosecution Exhibit 2015).

Haeffliger CB

In line with the nature of the letter of 11 August 1939 from Dr. Krueger and Herr von der Heyde to the Military Economy Staff (Exhibit 2015), the Defense submitted (as Exhibit 41, Haeffliger Document No. 48, Document Book IV, page 1 of the English and the German), an affidavit by Dr. Krueger, a co-signer of the afore-mentioned letter, which reproduces a statement of Dr. Krueger, made on 1 October 1945 to one of the interrogators. This statement clearly shows that the entire letter to the Military Economy Staff was composed in accordance with the caution required at the time by the National Socialist authorities with regard to question of citizenship, and that its formulation was, therefore, a "window dressing". This is particularly true in the case of the statements concerning the alleged interest of Farben in Haeffliger's retention of his Swiss citizenship. Further, as may be seen from the afore-mentioned affidavit by Krueger, he had composed and sent the letter to the Military Economy Staff without consulting Haeffliger and thus he presented Haeffliger with a fait accompli. The statement in this affidavit is corroborated by Haeffliger's testimony in his re-direct examination (page 9453 of the English transcript, pages 9563 and 9564 of the German).

Furthermore the fact that Dr. Krueger had composed and sent the letter to the Military Economy Staff without Haeffliger's knowledge is established in particular by the letter of 30 August 1939 from von der Heyde to Dr. Bahl (Prosecution Exhibit 2017), in which the following significant sentence is found, quote:

"I myself see no objection to acquainting also Director Haeffliger with the full text of this letter" (End of quotation). (The letter meant is the letter just mentioned of 11 August 1939 to the Military Economy Staff - Prosecution Exhibit 2015 - /insertion ours)

Haeffliger CB

The above-mentioned Prosecution Exhibit 2016 (letter of 5 June 1939 from von der Heyde to Haeffliger) contains no incriminating evidence of any kind, so that it may be said, in resumé, that these three exhibits submitted by the Prosecution do not serve to rebut the material evidencing Haeffliger's political views which was submitted by the Defense.

In connection with the matter of becoming a German citizen it deserves to be noted that in his direct examination (page 9068 of the English transcript, page 9165 of the German), Haeffliger testified that the Gau office of the NSDAP in Frankfurt objected to his holding the position of a Farben Vorstand member, because he was a Swiss citizen and it demanded his removal in 1941. Reference is also made to Haeffliger's statements in his direct examination (pages 9069 - 9072 of the English transcript, pages 9166-9168 of the German) concerning the difficulties that would ensue for him personally in the case of failure to become a German citizen, and to the Ter Meer-Exhibit 9, Ter Meer-Document Book I, page 2 - this is an affidavit by Dr. Ter Meer in which he testifies as follows in section 10), quote:

"The Gau office of the NSDAP also raised some question about Paul Haeffliger as a Vorstand member, because he was a Swiss and not a German citizen. But this question was straightened out by Haeffliger's becoming a German citizen."

End of quotation.

To round off the picture, mention should also be made of a statement of the Swiss Consulate in Frankfurt on Main (Exhibit 7, Haeffliger Document No. 14, Document Book I, page 24 of the English and the German versions), according to which Haeffliger never surrendered his Swiss nationality, and was issued a Swiss passport on 29 January 1946, for the last time. This statement also discusses the particular condition in which a Swiss citizen in Germany lived at that time. The fact that Haeffliger retained his Swiss nationality when he became a German citizen is also revealed in Haeffliger's testimony during his direct examination (page 9073 of the English transcript, page 9170 of the German). On 25 January 1946 Haeffliger - as he testified during the direct examination (page 9076 of the English transcript page 9172 of the German) - surrendered his German citizenship, so that now he is no longer a citizen of two countries, but only a Swiss national.

Furthermore, in order to refute Haeffliger's testimony concerning his political views, the Prosecution submitted Exhibit 2005, NI-7387, a letter of 22 March 1933 from Haeffliger to Herr Carlo Ferrario, Milan. In this connection Haeffliger stated in his re-direct examination (page 9442 of the English transcript, page 9553 of the German) that Ferrario was the sole owner of his trading company, which was important in chemicals, "Azienda Vendita di Prodotti Chimici," and that consequently a letter to him was to be looked upon as an official letter. The letter is quite obviously an answer to a letter from Ferrario, which was certainly composed in

extremely high-flown language and in which Ferrario had expressed his congratulations over the change of regime in Germany. Consequently, the defendant could naturally not answer differently than he did, without expressing his personal views in it. The entire letter is window-dressing, to which no significance of any kind can be attached.

As for Haeffliger's attitude regarding the Jewish question, reference is made to his testimony in the direct examination (page 9069 of the English transcript, page 9165 of the German), in which he discusses the help and aid that he rendered to Herr James Pele, a Jewish business friend of many years, in connection with the latter's emigration. This testimony is confirmed in all particulars by the affidavit of Herr James Pele, submitted as Exhibit 43, Haeffliger Document No. 50, Document Book IV, page 6 of the English and the German versions.

In connection with the appraisal of Haeffliger's political views mention should be made of the photostatic copy, submitted as Exhibit 44, Haeffliger Document No. 51, Document Book IV, page 10, of the English and the German version, of a notice of 2 June 1947 from the State Ministry of Hesse, in which it is certified that Haeffliger was not subject to the Law for Eradication of National Socialism and Militarism, of 5 March 1946, in other words, that he was not one of the supporters of National Socialism and its aims.

II. Position of the defendant Paul Haeffliger within
Farben.

After the description of Haeffliger's career and political views, it seems far more important to the Defense, prior to considering the separate Counts of the Indictment, to give a general exposition of Haeffliger's position within Farben, in order to show the scope of his responsibility and the extent of his influence.

In this connection the Defense wishes to refer to what it said in the Opening Statement for Haeffliger (pages 4822 and 4823 of the English transcript, pages 4823 and 4833 of the German), in which it was already pointed out that the Prosecution produced an amazingly small amount of evidence for the personal responsibility of every one of the defendants, since the Prosecution is quite apparently trying to allege joint responsibility of all the defendants, for all the things that happened within the enormous Konzern of Farben. With regard to the question of responsibility of the individual Vorstand members for the happenings within Farben, the Defense Counsel for the defendant Haeffliger takes the same standpoint as the other Defense Counsels, and refers - in order to avoid repetition - to the statements of the Defense Counsel for the defendant Dr. von Knieriem in his Closing Brief, pages 94 - 99, to the legal opinion of Edmund Mezger, Professor of Criminal Law at the University of Munich, submitted as Defense Exhibit 281/282 (Knieriem Document No. 40/41), to the legal opinion of Dr. Walter Schmidt, attorney and notary, (Defense Exhibit 170 (Knieriem Document No. 34) by the Defense Counsel of the defendant von Knieriem.

Briefly summarized this attitude of the defense aims at the point that, under penal law, there can be no question of a joint responsibility of all defendants for all happenings within Farben, that much rather, owing to the actual method employed in managing Farben, which is also confirmed by the statutes, the responsibility was divided among the individual members of the Vorstand in such a manner, that the responsibility of the individual member of the Vorstand remained confined to the particular field handled by him personally, because with Farben's gigantic volume of business there was for all practical purposes, no possibility of the individual member of the Vorstand surveying the fields dealt with by the other members of the Vorstand.

As was already stressed in the defense opening statement for the defendant Hoeffliger, the judgment of the responsibility under penal law for the individual defendant must be limited, from among the crimes alleged by the prosecution, to those actual conditions, i.e. the handling of the management in Farben, which must necessarily lead to the division of responsibility just mentioned.

The defense counsels for the defendant Hoeffliger are furthermore, of the same opinion as the other defense counsels, that the prosecution did not submit any evidence for the existence of a conspiracy among the defendants such as is dealt with in count V of the indictment, i.e. for the existence of a common plan for the perpetration of the crimes listed in the indictment. Otherwise count V of the indictment, according to the ruling of the Tribunal in the afternoon session on

22 April 1948, limits itself to count I of the indictment. Following up the arguments in their opening statement the defense of the defendant Haeffliger would like to draw attention again to the basic principle of the IMT-judgment, transcript page 16929. Quotation :

"that criminal guilt is personal, and that mass punishments should be avoided."

End of quotation.

It further deserves to be mentioned in this connection, that the IMT in applying this principle even in the case of the prominent defendants, who were arrayed before it and who belonged to the Reich cabinet, the supreme embodiment of the political will of the Germany of that time, examined very carefully the personal guilt of everyone of those defendants and thereby decided for quite a number of defendants on a verdict of not guilty on various counts of the indictment.

The defense is of the opinion that this must apply even more to those indicted in this case, who were merely members of the Vorstand of a private undertaking and not bearers of any political responsibility such as the defendants of the IMT case, so that, therefore, the joint responsibility of all defendants as alleged by the prosecution is not in keeping with the principles of the IMT judgment.

If, therefore, the basis for the judgment of the penal legal responsibility of the individual defendants and with that also of the defendant Haeffliger is the position he actually held within the Vorstand of the IG and the field of business given to him, then this position of Haeffliger

under consideration of the evidence submitted in this connection by the defense should be examined somewhat more closely. The defense again refers in this respect to its arguments in the opening statement and again draws attention to the quotation from the judgment of Military Tribunal II in the Fohl case (Transcript page 8079).

Quotation:

"At the outset of the testimony, the Tribunal realized the necessity of guarding against assuming criminality, or even culpable responsibility, solely from the official titles which the several defendants held. . . . The Tribunal has been especially careful to discover and analyze the actual power and authority of the several defendants, and the manner and extent to which they were exercised, without permitting itself to be unduly impressed by the official designations on letterheads or office-doors".

End of Quotation.

In following up those principles stated in the judgment quoted above, the defense of the defendant Haeffliger, in the presentation of their evidence as to the field of responsibility of Haeffliger within the Farben, was impelled by the idea of describing matters as they actually were without permitting the official title of Haeffliger as member of the Vorstand of the Farben to influence them unduly.

First of all concerning the question of the field of responsibility of Haeffliger within the Farben, we indicate the statements in his direct questioning (Engl. transcript pages 9076 - 9108, German pages 9172 - 9206). The briefly summarized result of those statements of Haeffliger is the following:

On the foundation of the Farben in 1925, Haeffliger was taken over as deputy member of the Vorstand. He remained in this position until 1936, when he

^a
became regular member of the Vorstand. On the foundation of the Farben there were altogether 82 members of the Vorstand, of these 39 regular and 43 deputy members. In consideration of the large number of members of the Vorstand the actual management during the period up to 1938 was in the hands of the so-called working committee, a smaller executive committee (Gremium) of about 20 members of the Vorstand. Haeffliger was not a member of this working committee, but his superior, the head of the sales combine chemicals, director Weber-Andreas, was a member of this executive committee. Nor was Haeffliger a member of the central committee formed in 1931 and enlarged in 1933. He was also not a member of the executive committee of the Aufsichtsrat namely the so-called administrative council. There was never a meeting or session of all the 82 members of the Vorstand. This shows that, for all practical purposes, Haeffliger at the time did not participate in the actual management of the Farben, i.e. as far as that goes he never held the position of a member of a Vorstand of a Aktiengesellschaft, in the normal sense of the word, in spite of his formal title as deputy member of the Vorstand, - such rather his responsibility was restricted to his own limited field of work within the sales combine chemicals, which he, under the direction of the head of the sales combine chemicals, Weber-Andreas, took care of and which is dealt with below.

Typical for the position of Haeffliger as compared with that of the other members of the Vorstand of the Farben is the fact that he was not promoted and was to some extent overtaken by other members of the Vorstand, some of whom were

younger. This is shown clearly by the fact that, in 1938 when he became a regular member of the Vorstand, he was the only one among the so-called Veteran members of the Vorstand who held the position of a deputy member of the Vorstand and belonged neither to the working committee nor to the central committee. In other words he was the only veteran member of the Vorstand who did not participate in the actual management of the IG as described above (compare direct questioning of Haeffliger, Engl. Protocol pages 9097-9081, German pages 9175 - 9177, where Haeffliger also explains the reasons for his failure to be promoted).

The prosecution have attempted by the means of the letter from Haeffliger to Weber Andreas of 1 December 1934 submitted as exhibit 2006 NI 4444, to undermine the statements by Haeffliger and show that Haeffliger, after all, did hold a more important position in the IG than was described by him in his third questioning. This letter, however, in reality, is a confirmation of the correctness of the statements by Haeffliger which is all the more valuable since it originates from 1934 i.e. a time when nobody thought of future court proceedings. The defense, in this connection, draws attention to the statements on Page 3 of the letter under figure 1) and quotes from this the following sentence ::

Quotation:

" I feel that, for some time, I have been pushed into the background, I must, indeed, look on whilst many of my colleagues and new young men are promoted over my head. . . . I am convinced that, if I have been neglected in these promotions, it can be attributed to be so-called ideological plan which, if I am correctly informed, provides altogether for only one member (i.e. Weber-Andreas) of the Vorstand from the Chemical Sparte. This schematic plan had a depressing affect on me as, in these circumstances, I must consider myself to be only a tolerated and somewhat superfluous member of the Vorstand. "

End of the quotation.

Haefliger, in his second questioning (Engl. transcript page 9443, German pages 9553 and 9554) stated, as to the character of the letter, that it was a confidential private letter which he addressed to Herr Weber-andreas for the purpose of obtaining a raise in salary and that, in order to put more stress on his desire, he painted his activity in the limits of the sales combine chemicals in glowing colors. This shows that one must not attach too much importance of those statements of the letter, -decisive in the opinion of the defense the above quoted sentences are decisive and the fact that - as Haefliger also pointed out in his second questioning - this letter is addressed to Herr Weber-andreas the head of the sales combine chemicals and not to the chairman of the Aufsichtsrat, Geheimrat Duisberg, who otherwise is competent for the settlement of salaries of the members of the Vorstand. Precisely this fact shows that Haefliger already at that time considered himself a subordinate of the head of the sales combine chemicals, Weber-andreas, and not a member of the Vorstand in the normal sense of the word.

The fact that Haefliger became a full member of the Vorstand in 1938, cannot, according to Haefliger's statement in his direct examination (Engl. transcript page 9082, German page 9176), be looked upon factually as a promotion, since the appointment of former deputy members to full members of the Vorstand was connected with the greatly diminished number of the total Vorstand - there were at the time only 27 members of the Vorstand - the dissolution of the working committee and also, in particular, with the fact that according to the new regulations of the stock law in 1937, there were no longer any so-called deputy members of the Vorstand in the legal sense.

As Haeffliger said in his direct examination (English transcript 9062, German page 9178), accordingly it was stated expressly by Geheimrat Schmittⁱⁿ the Vorstand meeting on 1 May 1936 in which the appointment of the deputy members^{to}/full members of the Vorstand was announced, that this appointment neither meant a pay increase nor a change in the internal position or function.

This shows that also after 1936 the actual position of Haeffliger in the Vorstand of Farben did not undergo any change.

As far as Haeffliger's position within the sales combine chemicals and the functions carried out by him there are concerned, his direct examination (Engl. transcript pages 9083/86, German pages 9179/82) shows the following:

Haeffliger, after his transfer to Farben controlled at first under the supervision of the head of the sales combine chemicals, Weber-Andreas, the commercial sector for anorganic chemicals. To this were later added the ferro-alloys and, as from 1928, the light metals especially electron metal up to about 1931; then the latter were moved to the Bitterfeld works and from then onwards were controlled directly by Director Weber-Andreas who had previously in the main also decided on commercial policy in this field. The bulk of Haeffliger's work dealt with his special field, on which he had already worked with the founder firm of Farben, the Chemische Fabrik Griseheim-Elektron, to which he had belonged from 1909 on, namely

the field of international conventions in the heavy chemicals sector. This work also repeatedly necessitated extensive travel abroad which kept him abroad on the average for 130 days per year (cf. direct examination of Haeffliger, Engl. transcript page 9084, German page 9179).

As far as the connection of Haeffliger to the head of the sales combine chemicals, Weber Andrease, is concerned he was not his deputy. He ranked as equal to Director Holm, Director Horstmann and Director von Heider and was responsible to Herr Weber-Andrease. These gentlemen, even in the absence of Mr. Weber Andrease, did not look upon Haeffliger as their superior, - they only communicated directly, without using Haeffliger as intermediary with Herr Weber Andrease (cf. direct examination Haeffliger, English Transcript, Page 9084, German page 9180). This tallies with the fact that Herr Weber Andrease liked to speak of his four columns, on which he rested. After Horstmann's death his place was taken by Herr Bergwardt. Herr Holm had been pensioned so that from that time on Herr Haeffliger was coordinated with von Heider and Bergwardt. Both gentlemen were merely titular directors and were not members of the Vorstand. Precisely this fact shows clearly that Haeffliger in reality did not hold a position within Farben which would correspond to the importance of a full member of the Vorstand, for von Heider and Bergwardt only considered Herr Weber-Andrease to be their superior.

The correctness of Haeffliger's explanation of his position in the sales combine chemicals and his connection with Weber Andrease is confirmed by the

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affidavit of his secretary for many years Ludwig Idlhoeh (Exhibit 5, Haeffliger document 12, document book I English and German page 12), further by the affidavit by Karl von Heider (Exhibit 6, Haeffliger document 13, document book I English and German page 18, the affidavit by Helmuth Borwardt) (exhibit 8, Haeffliger document 15, document book I English and German Page 26), the affidavit by Wilhelm Kemp (Exhibit 9, Haeffliger document 16, document book I English and German page 29, the affidavit by Bodo Scharf (Exhibit 10 Haeffliger, document 18, document book I, English and German page 32) as well as by the affidavit of Wilhelm Michael Schneider (Exhibit 11, Haeffliger document 18, document book I, English and German page 35). - To further draw attention to prosecution exh. 375 NI-9267, affidavit by Herman Bassler, in which, under figure 4), Herr Weber-Andreas is named as head of the sales combine chemicals and it is expressly stressed that he did not have a deputy.

Finally in this connection I indicate the statements of the defendant Buergin in his final examination (English transcript 8443 German Pages 8522/3), who declared with certainty that Haeffliger was not looked upon as the deputy of Herr Weber Andreas in the sales combine chemicals.

After the death of Weber Andreas in October 1943 the defendant von Schnitzler became head of the sales combine chemicals. Also this fact is indicative of Haeffliger's position within the sales combine chemicals as

well as also of the fact that Haeffliger, after 1936 when he became a full member of the Vorstand, was not promoted, for as the oldest member of the sales combine chemicals it would have been obvious to make him the head. The fact that not he but Herr von Schnitzler, who came from another sales combine namely dyse, took over the management, shows clearly that Haeffliger, ever after Weber Andrease's death, was not looked upon as the authoritative man in the sales combine chemicals. Therefore, in 1944, to all outward appearance, he became the deputy of Dr. v. Schnitzler, but internally between v. Schnitzler, v. Heider Bergwardt and Haeffliger it had been arranged that v. Heider and Bergwardt should to a great extent, be independent (cf. direct examination Haeffliger, Engl. transcript page 9085, German page 9183). This is also confirmed by the affidavit by Hermann Baessler already mentioned by the prosecution and introduced as exhibit 375 in which the following is stated literally under 4), Quotation:

"From 1944-1945 Georg von Schnitzler was the Chief (of the Sales Combine Chemicals - our insertion;) his deputies were: For metals: Paul Haeffliger, Vorstand member; For organic materials; Hellmuth Bergwardt, titular director; for inorganic materials Karl von Heider, titular director."

End of quotation.

Further confirmation is contained in the affidavit by Karl von Heider presented by the prosecution as exh. 372 NI-7318 which, under 13) states as follows, Quotation:

"Georg von Schnitzler had the over-all leadership of Sales Combine Chemicals after 1943. Under Schnitzler, Paul Haeffliger was in charge of the Division Metals; Hellmuth Bergwardt of the Division Organics; and I was in charge of the Division Inorganics."

End of Quotation.

Hence, to summarize, it is established that the position of Haeffliger within the Chemicals Sales Combine did not change with regard to the importance of his functions even after the death of Weber-Andreac in the fall of 1943.

It has already been pointed out above that the bulk of Haeffliger's activity lay in the field of the international conventions of the heavy chemicals sector. Besides this Haeffliger also had limited control of metals within department M of the Chemicals Sales combine (a.f. direct examination of Haeffliger, English transcript pages 9092 - 9095, German pages 9190-9193). This statement by Haeffliger shows that the sale of magnesium alloys, also including electron metal, was removed to the Bitterfeld plant, that the electron metal department in Bitterfeld operated quite independently under Director Ziegler and that Ziegler was directly responsible to Weber-Andreac. The same was also true for the light-metal sector within department M which was independently controlled, at first in Frankfurt and later in Berlin, by Direktor Meyer-Kuester who referred directly to Herr Weber-Andreac on all more important questions. We wish here to refer to the above-mentioned Exhibit 6, Haeffliger Document No. 13, Document Book I, English and German page 18, affidavit by Karl von Heider, wherein it is stated that Herr Ziegler and Herr Meyer-Kuester did not make detailed reports to Haeffliger concerning current transactions in their departments. In addition reference is made to the supplementary examination of the defendant Buergin (Engl. transcript, pages 8440-8443, German pages 8517-8521). Buergin similarly confirms that Direktors Ziegler and

Meyer-Kuester worked quite independently and that they preferred to contact Herr Weber-Andreas directly over Heefliger's hand,

Besides covering the international conventions in the heavy chemicals sector and handling the metal field (with the limitations indicated above), Heefliger engaged in the performance of so-called "odd jobs" which were referred to him from time to time by Weber-Andreas and for which he has given a number of examples in his direct examination (English transcript, page 9095, German page 9192). The correctness of this testimony is also confirmed by the defendant Buergin in his re-direct examination (Hochverhör) (English transcript page 8442, German page 8521).

And finally, Heefliger's sphere of activity within department M also included ferrous alloys. Here his activity was limited almost exclusively to the information required by him for the meetings of the international ferrous-tungsten and ferrous-molybdenum convention, which took place under the chairmanship of Lord Riverdale of the English group (cf. direct examination Heefliger, English transcript, pages 9095-9096, German pages 9192, and 9193).

In 1934 nickel was added to the work-sphere of department M; here the sale of the nickel was entrusted to the Metallgesellschaft AG., Frankfurt on Main, and the activities of department M were simply restricted to a small sector, namely, to the introduction of the new type of nickel for new purposes, such as accumulators and alloys with special magnetic qualities and also to participation in discussions

with the International Nickel Company of Canada (INCO) Toronto, and the Mond Nickel Company Ltd, London (cf direct examination Haeffliger, Engl. Transcript page 9096, German page, 9193).

Finally, a number of other fields having nothing to do with metals came into the work-sphere of department M (cf direct examination Haeffliger, Engl. Transcript pages 9096 and 9097, German page 9193).

To avoid any misunderstanding it should also be pointed out that the abbreviation "M" for this department means "Miscellaneous", not "Metals" (cf: direct examination Haeffliger, Engl. Transcript page 9097, German page 9194).

The above shows that Haeffliger's chief field of activity, at least until the outbreak of war, lay in his special field: the handling of international conventions in the heavy chemicals sector and, in addition, that he simply executed so-called "odd jobs" in various fields of department M under the direction of Weber-Andreas.

Following the outbreak of war on 1 September 1939 Haeffliger's own work field, the handling of the international conventions in the heavy chemicals sector, ceased operations, and henceforth his activity was restricted to performance of the previously mentioned "odd jobs" and other special tasks referred to him from time to time of which he gave some examples in his direct examination (Engl. Transcript, page 9098, German pages 9195 and 9196).

After the outbreak of war on 1 September 1939 Haeffliger took a second residence in Berlin where he had a small office (cf.: direct examination Haeffliger, Engl. transcript page 9098, German page 9194).

Haeffliger's description of his activities following the outbreak of war is confirmed by exhibit 11, Haeffliger Document No. 18, Document Book I, Engl. and German page 33, affidavit by Wilhelm Michael Schneider.

The above survey of Haeffliger's activities and functions within the Chemicals Sales Combine shows that Haeffliger had a special position within the Vorstand of I.G. in that he was not entrusted with tasks which normally correspond to the position of a Vorstand member in such a Konzern; thus the conclusion may be drawn that Haeffliger can not be charged with the responsibility for formulating the business policy of I.G. as maintained by the prosecution if his real position is considered - and this consideration alone is conclusive evidence for a legal judgment. To avoid misunderstanding the defense counsel for Haeffliger wishes herewith to state his express opinion that this business policy of I.G. was in no wise connected with the crimes as maintained by the prosecution. Haeffliger's defense counsel does not wish here to deny implication in this business policy because he sees something incriminating in this policy; it is simply endeavoring to portray Haeffliger's real position within the Vorstand as it actually was, and thus delineate the bounds of his own sphere of responsibility.

Neither did Haefliger's activity within the various committees of Farben to which he belonged serve to increase the significance of his position in Farben as described above.

From 1934/5 Haefliger belonged to the Chemicals Committee.

In his direct examination he described the work-sphere of this committee pointing out that he supervised the commercial employees (Eauflaute) through the technicians, especially in the field of the convention and control of the director of the Chemical Sales Combine and that matters of current business were not discussed or decided in the Chemicals Committee, also, that the Chemicals Committee was not concerned with setting up production programs (cf.: direct examination Haefliger, Engl. transcript, pages 9091, and 9092, German pages 9189 and 9190), and that decisions on these matters were rather entrusted to the technical sub-committees and the Technical Committee (TEA). ^{it} This is clear that the Chemicals Committee did not have a place of decisive importance within the total organization of Farben. The same is true of the "Commercial" committee to which Haefliger belonged from 1937 (cf.: direct examination Haefliger, Engl. transcript, page 9099, German page 9196), as Haefliger states in his direct examination (Engl. transcript, pages 9099-9109, German pages 9197 and 9198), the commercial committee similarly had no decisive function, but rather served only as a consultative body for the exchange of ideas on general questions, such as movement of goods, which was more and more closely

and noticeably restricted by official interference, among the interested members of the various Farben sales associations. The commercial committee in particular was not in a position to interfere through its opinions in the current business of the various sales combines, which were autonomous bodies. Moreover, this committee had nothing to do with the technical planning and the setting up of production programs. This testimony of Haefliger is confirmed by exhibit 12, Haefliger Document No. 19, Document Book I, Engl and German page 35, affidavit of Karl von Heider.

The South-East Europe Committee, to which Herr Haefliger belonged from 1938 on (cf. direct examination Haefliger, Engl transcript page 9102, German page 9199), was also merely of a consultative and informative character without decision-making functions (cf. direct examination Haefliger, Engl. Transcript page 9102, German pages 9199 and 9200).

The same is true of the Eastern-Asia Committee, to which Haefliger belonged from about 1935 on (cf. direct examination Haefliger, Engl. transcript pages 9102 and 9103, German page 9196), and which never had any significance (compare: direct examination Haefliger, Engl. transcript 9103, German page 9200).

In considering at this point the "Propaganda Kommission" (Publicity Committee) to which Haefliger belonged since 1933 (cf. direct examination Haefliger, Engl. transcript page 9104, German page 9196), it may be said that this committee was simply concerned with advertising, and thus had nothing to do with political propaganda (cf. direct examination Haefliger, Engl. transcript pages 9103 and 9104, German page 9202).

also the interrogation of the defendant Mann, Engl. transcript page 10299, German page 10433); thus this committee, too, had no importance arising out of responsibility for the business policy of I.G.

In consideration of the position of the individual sales combines within I.G., it was already indicated above that these sales combines had a sovereign character, and conducted current business on the independent responsibility of their directors (cf.: direct examination Haeffliger, Engl. transcript, page 9106, German page 9204). Accordingly, the directors of the sales combines were constantly concerned with the preservation of their independence, and did not allow any interference in their current business from other sales combines (cf.: direct examination Haeffliger, Engl. transcript page 9106, German page 9204).

Reports to the Vorstand members on business events within the individual Sparte and sales combines of I.G. were consequently, and in view of the immense volume of business of I.G. plus the brevity of the Vorstand meetings, only very succinct and related purely to more important matters affecting the total business of I.G. without any voting according to customary procedure (cf.: direct examination Haeffliger, Engl. transcript pages 9106 and 9107, German page 9204). With particular consideration for the planning of production, including credits, it may be said that these matters were discussed and decided upon in the Technical Committee meetings which preceded the Vorstand meetings (cf. here also prosecution exhibit 182, NI-7766, Document Book 7, Engl. Page 37, German page 70, affidavit by Hans Wagner). Since the large majority of the Vorstand members were members of the Technical Committee

reports for the commercial members of the Vorstand during the Vorstand meetings were similarly very much condensed in respect of the discussions and decisions in the Technical Committee meetings (cf.: direct examination Haefliger, Engl. transcript page 9107, German pages 9204 and 9205).

Haefliger's portrayal of the nature of the reports in the Vorstand are confirmed by exhibit 48, Haefliger Document No.36, Document Book IV, Engl. and German page 28, affidavit by Karl von Heider, regarding the form of the report of the director of the Chemicals Sales combine, Heber-Andreas, in the Vorstand meetings, and also by exhibit 15, Haefliger Document No.30, Document Book I, Engl. and German page 42, affidavit by Karl von Heider regarding the scope of the agenda and the report on the individual points of the agenda in the Vorstand. In this last-named affidavit (Haefliger exhibit 15), von Heider also deals with the nature of reports in the Chemicals Committee which were likewise only very brief.

The above portrayed nature of reports in the Vorstand demonstrates, in the opinion of the defense counsel, that this information did not suffice to convey to the individual members of the Vorstand, hence also and particularly to the defendant Haefliger, a detailed picture of business matters beyond the business sphere entrusted to them: themselves, with the result that sufficient knowledge of such matters for the establishment of legal responsibility can not be concluded. In the Haefliger case it must particularly be added that only since 1938, when he became a regular member of the Vorstand, did he regularly take part in the Vorstand meetings,

and that he had only occasionally attended, as a guest, the meetings of the Working Committee which, until that time, actually controlled the management of I.G. (cf: direct examination, Haeffliger, Engl. Transcript page 9080, German page 9176).

The above facts confirm the opinion already expressed by the defense counsel that Haeffliger had a special position within the Vorstand of Farben, in that his activities and functions in the Chemicals Sales combine or in the various committee of which he was a member, did not correspond to the activities and functions as normally performed by Vorstand members of such a Konzern, and also that Haeffliger, by virtue of his real position in Farben, which alone is decisive for a legal judgement, cannot be made responsible for the formulation of the entire business policy of Farben as maintained by the prosecution.

In addition, reference may again be made in this connection to the citation from the judgement of Tribunal II in Case 4 (Pohl et al.)(Transcript page 8111) already mentioned by Haeffliger's defense counsel in his opening statement; therein it is stated that the knowledge of certain punishable acts is, in itself, not sufficient evidence to sentence a defendant, but that in addition to this knowledge some form of positive conduct on the part of the defendant must be established. The citation reads:

"The only consent claimed arises from imputed knowledge - nothing more. But the phrase "being connected with a crime" means something more than being in the same building or even being in the same organization with the principals or accessories. The International Military

Tribunal recognized this fact when they placed definite limitations on criminality arising from membership in certain organizations. There is an element of positive conduct implicit in the word "consent". Certainly, as used in the ordinance it means something more than "not dissenting".

End of citation.

It is the thesis of Haeffliger's defense counsel that Haeffliger, in view of his real position within the Vorstand of Farben as depicted above, had no influence whatsoever upon the business policy of Farben as implied in "positive conduct", and that, therefore, he in particular was incapable of preventing decisions of the Vorstand or conclusions of other Vorstand members within their work-spheres even if he had had positive knowledge - which is denied by the defense counsel - of the allegedly criminal character of such decisions or conclusions. Even ^{it} is desired to ascribe to the individual Vorstand members a certain duty to supervise the activities of the other Vorstand members, a supervisory obligation of this kind would not suffice for a judgment in the Haeffliger case for the real reasons given above; for criminality even in the event of this supervisory obligation being violated can only be assumed if the Vorstand member concerned was actually in a position to prevent the punishable act by exercising this supervisory obligation. In conjunction herewith reference is made to the previously noted opinion of Professor of Criminal Law Edmund Mezger (Defense Exhibit 280/281, Krieger Document 40/41).

With regard to the contents of the above-mentioned supervisory duty of the Vorstand members towards their colleagues, reference is made to - in order to avoid repetition - to the expert opinion of Professor Mezger just quoted and the expert opinion of the attorney-at-law and notary public, Walter Schmidt, (Defense Exhibit 280, Knieker-Document 39) and to my statements in my closing brief during the afternoon session of 2 June 1948. As regards the defendant Haeffliger it must be said in this connection that, in the opinion of the defense, the prosecution has not introduced a single exhibit which revealed that the defendant Haeffliger had ever been able to perceive from the reports of his colleagues or by some other means that the criminal actions referred to in the indictment had been committed. Hence it follows that the prosecution has not proven that Haeffliger was bound to take steps and prevent such actions. For this reason there can be no responsibility to original law with regard to the crimes referred to in the indictment, from the aspect of an offense of omission.

III. Opinion with regard to point 1 of the indictment.

The defense counsel of the defendant Kaefliger, as well as the rest of the defense counsels, is of the general opinion that the entire evidence submitted by the prosecution with regard to count 1 and, simultaneously, count V of the indictment is irrelevant since the prosecution failed in the case of all defendants and, therefore, also in that of the defendant Kaefliger, to furnish proof that they had had positive knowledge of Hitler's special plans of aggression which, according to the IMT-judgment, is absolutely essential before the judgment from this aspect can be passed. The prosecution's evidence with regard to count 1 of the indictment is directed, on the whole, towards showing that Farben had made a more or less important contribution to German re-armament before war and the strengthening of the German war potential after the outbreak of war. This objective fact - assuming it is correct - is not sufficient, however, according to the IMT-verdict, to justify a conviction on count 1 of the indictment unless, at the same time, it can be proved, as has just been pointed out, that the defendants had positive knowledge of Hitler's special plans of aggression which, during the IMT-trial, was found to apply only to a very small number of the highest politicians and military officials who had participated in certain secret conferences called by Hitler. To avoid repetition reference is made in this connection to the motion by the defense of 17 December 1947 which was submitted during the session of 17 December 1947 and the opinion of the defense of 9 January 1948 referring to the reply by the prosecution of 5 January 1948.

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If in the following, therefore, in the case of the defendant Haefliger a reply is made at all with regard to certain evidence presented by the prosecution concerning count I of the indictment, this is only done for correctness and completeness sake and in order to avoid giving the impression that the defense wish to try to avoid debating this evidence.

With regard to the count of the indictment "Farben's alliance with Hitler" the defense of the defendant Haefliger may be brief. During his direct interrogation (English record pages 9108 and 9109, German pages 9206 and 9207) Haefliger testified that he heard about the defendants Baotefisch's and Gettinesu's visit to Hitler in November 1932 concerning questions in connection with the production of synthetic gasoline (prosecution exhibit 28, NI-8788, document book 3, English page 9, German page 20) for the first time here in Nuernberg through the prosecution. Furthermore, he did not know about the part which these two defendants allegedly played in the NSDAP. He had no knowledge either of the defendant Baotefisch's membership of the so-called Circle of Friends (Freundeskreis) of Himmler, as asserted by the prosecution.

Also, Haefliger did not know about the meeting between the German industrialists and Hitler at Goering's house (prosecution exhibit 37, D-203, document book 3, English page 64, German page 89). He did not know about Farben's donation of RM 400,000.— as a result of this meeting (prosecution-exhibit 56, NI-391, document book 3, English page 112, German page 122) either, as he had altogether nothing to do with the donations made by Farben, which are referred to in the indictment, since these donations came under the scope of the

Central Committee to which he never belonged.

With regard to Farben's participation in Germany's re-armament Haeffliger, to his recollection, had been informed of the erection of a magnesium emergency plant in Aken early in 1935, however, he never connected this emergency plant with possible preparations for an aggressive war (cf. direct interrogation Haeffliger's, English transcript page 9110, German page 9208).

Nor was the extension of Farben productions in various fields prior to the outbreak of war considered by Haeffliger from the standpoint of preparations for an aggressive war but as a means by which to strengthen the self-sufficiency of German economy in view of the extreme shortage of foreign currency (cf. direct interrogation Haeffliger, English transcript page 9112, German page 9209).

With regard to the speeding-up of German re-armament Haeffliger declared, during his direct interrogation, (English transcript page 9115, German page 9212) that he had absolutely no opportunity to survey the whole of German re-armament, so that from this he was unable to draw any conclusion that these were preparations for an aggressive war. Although he thought that the international situation was strained he believed that the re-armament was of a defense nature. It should be noted in this connection that Haeffliger never held any position with any German government office or authority which worked for the mobilization of Germany (cf. direct interrogation Haeffliger, English transcript 9116,

German page 9213), so that it was neither possible for him to obtain official information about the speed and the extent of German re-armament nor about the underlying reason for this re-armament, which does not mean of course, that the positions which the other defendants held with government and other official offices, made it possible for them to obtain this information. The correctness of Haefliger's statement on this point is confirmed by prosecution-exhibit 511, NI-1294, document book 25, English page 3, German page 3, affidavit Dr. Guenther Frank-Fahle, concerning Farben personnel who held government offices, and prosecution exhibit 512, NI-5713, document book 25, English page 7, German page 10, affidavit of the defendant Illner pertaining to the same subject. In both affidavits the name Haefliger does not appear at all.

With regard to the utilization of Farbens magnesium production for German re-armament, as asserted by the prosecution, Haefliger declared in his direct interrogation (English transcript pages 9116 and 9117, German page 9213) that in this too he did not see any preparations for an aggressive war, and at the same time he pointed out the misleading statement by the prosecution concerning the increase of German magnesium production by more than 14000% and of aluminium production by more than 1300%. This estimate by the prosecution is based on the lowest figures for magnesium production which occurred during the crisis and during which only one quarter of the available capacity was utilized. The same can be said for the increase in aluminium production. The defendant Haefliger points out in his direct examination (English trans. page 9117, German page 9214)

that if, in the U.S.A., the estimate were to be based on similarly low figures for production during the same period of time, the increase would amount to approximately 20,000% for magnesium and 1500 % for aluminium production.

In this connection reference is made to exhibit 15, Haeffliger-document 22, document book I, English and German page 51, affidavit of Otto Dessoiff. In this affidavit Dessoiff explains the increase in German aluminium production and the underlying reasons for this, which he sees particularly in the German endeavors to achieve self-sufficiency and points out, in this connection, that a switch-over to aluminium was made in order to replace copper, brass and tin, thus saving foreign currency.

In order to see the magnesium production in the proper light reference is made to the cross-examination of the prosecution witness, von Hannoeken, (English transcript page 1023, German page 984). The witness testifies that at the beginning of the war magnesium played next to no part in the light metal production and that only in the course of the war did this gain in importance. He quoted the percentage of magnesium in the entire light-metal production at the outbreak of war at 3%, which shows that before the outbreak of war Parben's magnesium production within the German re-armament program was of hardly any importance at all. (cf. also interrogation of the witness Milch, English transcript page 8536 et seq., German pages 8617 et seq., further interrogation of the witness Weeber, English transcript page 8556 et seq. German Page 8637 et seq., also interrogation of the witness Pister, English transcript page 11865 et seq.,

German pages 22208 et seq.).

Moreover the defense of the defendant Baergin discusses the Magnesium Complex so that - in order to avoid repetitions - we hereby refer to those statements.

The prosecution, in order to prove Haefliger's knowledge of the use of Magnesium for military purposes, presented exhibit 2013, NI-10628, a note from Haefliger for Ziegler dated 5 November 1938, and also Ziegler's reply of 9 November 1938. In this correspondence there is some talk of tests with Artillery wheels made of Magnesium. Ziegler's reply of 9 November 1938 shows that Haefliger was not at all informed about all the developments in this field, as the manufacture of such artillery wheels from Magnesium had already been going on since 1934 whilst Haefliger apparently only heard of it in 1938. Ziegler's letter further shows that the use of magnesium as worked on by Farben for such purposes was licensed also to foreign countries such as France and Italy for instance, so that one is justified in concluding from this that within Farben this use of Magnesium was not looked upon as preparation for German war of aggression, since otherwise Farben would never have received permission to license this process to foreign countries. In his final examination Haefliger stated about this prosecution exhibit (Engl. transcript page 9451, German page 9562), that after Ziegler's reply he never again heard anything about these artillery wheels.

The relevance to count I of the indictment of exhibit 2010, NI-14569, also presented by the prosecution in relation to the Magnesium complex, is not at all clear.

so that the defense believe that they need not deal any further with this point.

Concerning the production of aluminium by Farben the prosecution presented as Exhibit 2009, NI-14674 a file note on a discussion with the raw material and foreign exchange staff of 11 August 1936 on the expansion of aluminium production. To start with it appears questionable whether Haeffliger ever received a copy of this file note, since according to the distribution list a copy was sent to him and Dr. Buhl together (cf. also final examination Haeffliger, Engl. transcript page 9445, German page 9557). Also this prosecution exhibit by the way does not show that the increase in the production of aluminium was to serve the preparation of an aggressive war.

Further the prosecution presented as exhibit 2011, NI-14670 a protocol on the discussion of the partners of the Aluminium Werk GmbH, Bitterfeld of 15 November 1935, in which the erection of a clay works in protected territory is dealt with. This exhibit, however, is completely irrelevant since in it, it is clearly stated that a participation in this planned clay works on the part of Farben is out of the question, since industrially there is no incentive for participation in this enterprise.

We further draw attention to the cross-examination of the prosecution witness Hannecken (Engl. transcript pages 1022, German page 983), in which the latter, on being asked, admits the possibility that Farben's share in the whole of German aluminium production was only 7%. Further von Hannecken stated (cf. English transcript page 1024, German page 985), that in Germany the chief participants in aluminium production were

the Vereinigte Aluminium Werke, i.e., not Farben. This shows that also in the field of aluminium production Farben did not make any contribution worth mentioning to the German armament.

The prosecution, furthermore, accuse Haefliger of participation in the hoarding of nickel for the alleged preparation of a war of aggression and in this connection indicate prosecution exhibits 724, NI-7564, document book 39, Engl. page 45 German page 79 and exh. 725, NI-9636, document book 39, Engl. page 47 German page 83. In this connection Haefliger is accused especially of participating in the use of the international cartell-connections in order to gain strategic stocks of nickel for Germany (Preliminary Trial Brief of the prosecution, part I. page 45a).

As rebuttal material to the above mentioned prosecution exhibits, to which must also be added exhibits 722, NI-4921 document book 39 Engl. page 35 German page 66, Exh. 726, NI-9638, document book 39, Engl. page 51, German page 90 and exhibit 727 NI-9639, document book 39, Engl. page 54, German page 94, the defense for the defendant Haefliger presented the following Haefliger documents:

Exhibit 16, doc. No. 25, doc. book II, English and German page 32

Exh. 16,	Doc. No. 25.	Doc. Book II,	Engl. and German page 32
" 17,	" " 23	" " II,	" " " 1,
" 18,	" " 24,	" " II	" " " 30
" 19,	" " 26,	" " II	" " " 68
" 20,	" " 27,	" " II,	" " " 71
" 21,	" " 28	" " II,	" " " 80
" 50	" " 57,	" " IV,	" " " 30
" 51,	" " 58,	" " IV,	" " " 34

These Haeffliger exhibits combined show the following picture:
 The International Nickel Company of Canada (INCO), Toronto, prior to the war, controlled about 85% of the world's production, i.e., practically held a monopoly. Already prior to 1933 in the course of other research work Farben had developed a new nickel process, the so-called nickelcarbonyl process, which later proved very useful for the saving of foreign currency. The German government ordered Farben to erect a Nickel production plant in Central Germany (Froese).
 'Arben naturally could not avoid this order. Farben informed the INCO for the purpose of running this new plant it was necessary that there be a large circulation quantity for nickel matte on hand. The INCO recognised the technical necessity for laying in an extra stock of nickel matte for these purposes and declared themselves prepared to deliver such extra supplies - spread out over 5 years. This extra stock, including the Nickel stocks existing in Germany, was, at the outbreak of war, sufficient for about 5 months, in proportion to Farben's requirements, while for covering all German requirements it was enough for only barely 2 months (cf. also direct examination Haeffliger, English transcript page 9122, German page 9219).
This shows that this stock was by no means so large, that it would have sufficed for the waging of a war of aggression, so that, therefore from the size of the stockpile one cannot draw any conclusions with regard to knowledge of the planning of a war of aggression. If, in prosecution exhibit 726, NI-9638, document book 39, English page 51, German page 90, the extra stock of nickel is termed purely a war stock,

then, in contradiction to this, we have to point out that this exhibit is a letter from the Vermittlungsstelle " of 17 Jan 1940 i.e. after the outbreak of war, so that one cannot draw any direct conclusion from this letter as to Farben's knowledge of the purposes of stockpiling a reserve of nickel prior to the outbreak of war.

This special stock, therefore, was a small strategic reserve, such as was created at the time by every country. In this connection it deserves to be mentioned that for instance England at the outbreak of the war disposed over an enormous reserve of nickel which, according to Reeffliger's statements in his direct examination, (English trans. page 9123, German page 9219) already amounted to approximately 24 000 t nickel content at the end of 1937.

As counter-payment for the delivery of the special stock the INCO received valuable technical data in the field of the production and the use of nickel powder. Farben continued the passing on this data up to the outbreak of war and without reservation passed on most important and modern technical knowledge to the INCO and its English affiliated company the Mond Nickel Co. This also proves that Farben, on building up its stock of nickel matte, never dreamt that this stock could serve the preparation of a war of aggression. These very important and valuable services by Farben for the supply of the special stock of nickelmatte disprove clearly the allegation of the prosecution that ^{any use} here/was made of the cartel connections by Farben in the nickel field for purposes of aggression.

Another proof for the attitude taken by Farbon is the fact that in the field of accumulator plates of sintered Nickel, Farbon made its experiences unreservedly available ^{also} to another American firm without compensation of any kind, in the hope that this might lead to a license agreement.

As far as the Nickel plant at Frose is concerned, Exhibit 51, Hoefliger Document No. 58, Doc. Book IV, page 54 of English and German text, shows that because of a shortage in material and manpower the Nickel production in this plant could altogether not be started until January 1943, namely several years after the outbreak of the war, and that even then this production was on a modest scale and reached only 25% of the scheduled production.

In summing up it may therefore be said that the exhibits submitted by the Prosecution on the range of questions involving Nickel in no way justify the conclusion that the defendant Hoefliger surmised the preparation for a war of aggression because of stockpiling same in that field or that he could surmise this.

On the subject of hoarding incendiary bomb shell cases, and large quantities of chemicals, as claimed in the Prosecution Exhibit 744, NI-4832, Doc. Bk. 40, page 42 of English text, page 54 of German text, Hoefliger declared in direct examination (English transcript 9119, German text, page 9215) that he was not informed on this in any detail and that in the year of 1935 or 1936 only, incidental to a visit to the Bitterfeld plant, he learned about the manufacture of such shell cases by Farbon, without, however, obtaining information about the extent

of the production. Reference in this respect is also made to the interrogation of the defendant Burgin (English transcript pages 8364 and 8365; German page 8449) and to the interrogation of the witness Milch (English transcript page 8538, and following, German page 8620, ff.)

When the Prosecution introduced as Exhibit 2007, MI-14560 a memorandum on a meeting in Bitterfeld on 17 June 1935, in which the storing of appreciable quantities of tungsten ore in the central sector of Germany and the shifting of the production of ferro alloys from the plants at Heiseville and Seeligen into the interior of the country is being discussed, Hoefliger in his direct examination (English transcript 9444, German pages 9555 and 9556) made the statement that this transfer never came about.

To Prosecution Exhibit 2008, MI-14660, regarding the establishment of an emergency plant for ferro-alloys in Teutschenthal Hoefliger in his direct re-examination (English transcript 9445, German page 9558) declared that Teutschenthal was an old plant from the first world war which had been closed down and even at a later date was not put into operation again for ferro-alloys.

The attitude of the Sales Combine Chemicals, on the question of Farben's participation in Germany's rearmament is best illustrated by the resolutions of Chemicals' Committee in the meeting of 25 September 1941, as dealt with in an affidavit by Karl von Kolder (Exh. 47, Hoefliger Document No. 54, Doc. Sk. IV, English and German page 23) and which prove in a manner which leaves no doubt that Farben were endeavoring to keep their share in the production of chemicals

for argument purposes as low as possible.

As regards the mobilization plans and mobilization orders for Farben, Hefliger in his direct examination (English transcript 9114, German page 9211) stated that he as businessman knew nothing of these technical mobilization plans and that production mobilization plans were discussed neither in the Commercial Committee nor in the Chemicals Committee and that in K.A. (Commercial Committee) merely the exemption of commercial employees from military service was discussed. In this connection reference is made to the cross-examination of the Prosecution witness Dr. Kuepper (English transcript 1930, German page 1927) in which this witness in reply to a question on that subject specifically stated that he as a member of K.A. at no time had had the slightest indication, nor had he observed it about any other member, that the so-called mobilization questions served the preparation for a war of aggression. That on the contrary he had viewed these measures merely in the light of general measures of precaution such as are normally taken by all countries of importance.

There also was no reporting on mobilization plans in the meeting of the Vorstand as can be seen from the statements of the defendant Kuehne in his supplementary examination (Nachverhoer) (English transcript 10224, German page 10360).

While Dr. Eismann, a witness for the Prosecution, in Prosecution Exhibit 105, NI-4953, document book V, Engl. page 106, German page 115, mentions the name of the defendant Hefliger in connection with negotiations of Farben representatives with the Reichsstelle Chemie

(Reich Office Chemistry) on questions of military economy before the outbreak of the war, Ehrmann already corrected that in his cross-examination (English transcript 1741 and 1742; German page 1727). On this point Hoefliger in his direct examination stated (English transcript 9115, German page 9212) that he at no time participated in such meetings. This is further confirmed by Exh. 14, Hoefliger document No. 21, Doc. Book I, Engl. and German page 49, affidavit of Bodo Sehnaf.

As regards Vermittlungsstelle W (Liaison Office W), Hoefliger in his direct examination (Engl. transcript 9114, German page 9211) stated that he as a business man never had any dealings with that office. Furthermore other defense counsels have expressed themselves at length on this range of questions; reference is being made at this point to such statements.

As regards another charge of the Prosecution as "The weakening of potential enemies of Germany through ^{by} Farbon / exploitation of cartel agreements", Hoefliger in his direct examination (English transcript 9123-9126, German pages 9220-23) declared that in negotiations for agreements in the heavy chemicals sector of which he was in charge, purely commercial considerations and the spirit of friendly cooperation alone prevailed at all times and that also after 1933 there was no change in that respect but that much rather the principle "business as usual" found application also after that time. Hoefliger furthermore stated that during the discussions on individual agreements neither he nor any of his associates ever pursued political goals of any kind nor did they engage in political propaganda.

and that at no time was there an attempt made to weaken the economic power of other countries with a view to strengthening the German War potential. Above all Haefliger refers to the fact that the renewal of the various agreements, and the conclusion of new agreements after 1933, all of which aimed at a reasonable market regulation, serves as a proof for the strictly business-like and fair attitude of Farben.

The Defense has had an opportunity to back up these statements of Haefliger by a series of affidavits of foreign partners to agreements with Farben. The very fact that foreigners manifested their willingness to make such affidavits has an exceptionally important meaning in this connection. This concerns the following documents:

- Exh.22, Haefliger Doc., doc.bk. III, Engl. and German page 1:
Affidavit of James Fairlie of Watling Lodge, Falkirk, Scotland, Chairman of the firm of John and James White Limited, Chemical Manufacturers, Sheffield Works, Rotherglen, Scotland;
- Exh.23, Haefliger Doc.30, doc.bk. III, English and German page 4:
Affidavit of Alick Bowen Hutton, Hutton-Wilson of Stourpaine Manor, Blandford Dorset, at present residing at Ashford Lodge, Patrickswell, County Limerick, Ireland, Chairman of Englecliff Chemical Company, Ltd., Uxley Lock, Englecliff, County Durham;
- Exh. 24, Haefliger Doc.31, doc.bk.III, English and German page 5:
Affidavit of Kenneth Henry Wilson of Park Hall Kidderminster, County Worcester, Chairman of the firm of Albright & Wilson Limited, Chemical Manufacturers of Oldbury, England;
- Exh.46, Haefliger Doc.52, Doc.Bk.IV, English and German page 11:
Affidavit of Ernst S.V. Lustig in Avesta (Sweden), Director of Alby Nya Klorotfabriks A.B., Avesta, and of the A.B. for Kemisk och Elektrokemisk Produktion, Trollhattan.

The correctness of Haefliger's presentations is furthermore confirmed by the following statements made under oath by former Haefliger associates who worked with him on the various agreements:

- Exh.25, Haefliger doc.32, doc.bk.III; Engl. and German page 8:
Affidavit by Wilhelm E. Kamp, Oberursel/Tamara (Hessen);
- Exh.26, Haefliger doc.33, doc.bk.III, Engl. and German page 13:
Affidavit by Bodo Schaeff, Frankfurt am Main;
- Exh.27, Haefliger doc.23, doc.bk. III, Engl. and German page 19:
Affidavit by Walter von Aum, Cvl Hamburg;
- Exh.28, Haefliger doc. 35, doc.bk.III, Engl. and German page 25:
Affidavit by Wilhelm Michael Schneider, Frankfurt am Main-
Eschersheim.

In this respect a series of exhibits of Haefliger's defense on Farben's granting of licenses abroad for products of strategic importance, and the interchange of experiences between Farben and foreign partners in that field are to be considered as particularly important proof for the fact that Farben in general and the officials of the Sales Combine Chemicals individually - among them the defendant Haefliger - never made an attempt to withhold from foreign countries the experiences gained in the pyrotechnics sector, which is again a clear proof to the fact that Farben, more specifically the defendant Haefliger, never pursued the intent of preparation for a war of aggression or that there was any knowledge about such intentions.

We have in mind here, on the one hand, the Licensing and the starting of operations of the most up-to-date magnesium metal installations by Farben in England and France in the years 1934-1936, described by the defendant Haefliger in his direct examination (Engl. transcript 9129 and 9130, German page 9227/28) which made these countries entirely independent of Germany for supply to their needs. After the plant was put into operation in England - a high protective tariff for the import of magnesium, also from the USA was introduced there.

The plant was built and put into operation with the assistance of technicians from Bitterfeld, for which purpose the works management of Farben provided their most up-to date equipments and experiences of most recent date.

Furthermore one should refer in this connection, to the affidavit made by the defendant Hoefliger on the subject of Farben's magnesium policy abroad, especially in U.S.A., as per exh. 29, Hoefliger Doc.No. 36, doc.bk. III, Engl. and German page 30. In that affidavit the defendant Hoefliger states that in its magnesium policy for foreign countries Farben was always motivated by the idea of introducing magnesium in other countries on a big scale. He describes Farben's constant endeavors, especially with regard to U.S.A., to introduce the production of magnesium, as well as the great difficulties which such endeavors encountered by reason of special conditions in the U.S.A., especially in the light of the competition from the Aluminum industry.

This proves clearly that until shortly before the outbreak of the war Farben was endeavoring to introduce abroad the production of a material of strategic importance and there could be no question, therefore, of Farben's obstructing foreign production with a view to strengthening the German armament potential.

The granting of licenses to England for the Nickel Carbonyl process it had developed and which is likewise of strategic importance would serve as another significant example for this attitude on the part of Farben. In this respect Hoefliger in his direct examination (English transcript 9132 and 9133, German page 9230 and 9231) stated that by reason of its agreement with

the Mond Nickel Co., London, Farben declared its willingness to establish a plant of that kind in Clydach (Wales) for the production of Nickel according to the process just mentioned; also to establish a plant for the distillation of Nickel Carbonyl. For that purpose it made available all the construction drawings and also special apparatus in the years of 1938^{and 1939} and, a few weeks prior to the outbreak of the war, i.e. as late as the first days of August 1939, it also had sent its technician, Dr. Otto Buddenberg, to England for the purpose of starting operations in the plants. This presentation by Haefliger is verified by Haefliger doc. No.37, doc.bk.III, English and German page 47, affidavit of Dr. Otto Buddenberg above mentioned.

Finally mention should be made of the contract agreement between Farben and the Monsanto Chemical Co., St.Louis (U.S.A.) on the licensing of a process for the production of phosphorus, another product of strategic importance, and of phosphoric acid in the important mammoth plant of Monsanto in the Tennessee Valley, together with comprehensive technical assistance and the disclosure of the entire know. For this Farben delegated Dr. Friedbert Ritter of the Pforta works, an expert in this field to Monsanto, to eliminate the difficulties which had arisen in that installation incidental to the production of phosphorus and of phosphoric acid. It should be established that Farben thereby has made an essential contribution to the smooth running production of phosphorus - a product so important in wartime - in the U.S.A. The interchange of experimental data with Monsanto was continued even after the war, in September 1939, in writing by way of Switzerland (refer to direct examination of Haefliger, English transcript

9134 and 9135, German transcript pp 9232/33).

Hoeffliger's representation on this range of facts is confirmed by Exhibit 31, Hoeffliger doc. No.38, Doc. Bk.III, English and German page 50, affidavit of the above-mentioned Dr. Ritter, as well as by Exhibit 53, Hoeffliger doc. No.60, Doc.Bk. IV, English and German page 41, affidavit of Gaston F. Dubois, St.Louis, former, Vice President and member of the Executive Committee of Monsanto Chemical Co., St.Louis. The affidavit last referred to contains in the last paragraph the following most important statements, -quotations:

"It is now known that elemental phosphorus played an important part in World War II, and while it was known at the time of our transactions with I.G. that phosphorus might be of potential value in a war, I can testify that at no time during our discussions was there ever an indication that the possibility of the use of phosphorus for war purposes ever was entertained by Dr.Paul Hoeffliger or in any way influenced his behaviour. In fact, the contract which we drew up was clear evidence that he did not seriously consider the manufacture of phosphorus on a large scale in America was a threat to Germany, mainly because he was not thinking along those lines or then he would not have made this contract. I do not hesitate to say that in my opinion the negotiations concerning this contract on both sides were carried out in an honest, open and above-board manner and that there certainly was no indication of any planning for war on the part of any representative of I.G."

End of the quotation.

As regards the further range of questions dealt with by the Prosecution under Count I, Farben's so-called propaganda and espionage activity abroad, Hoeffliger has dealt with this in his direct examination (English transcript pp.9139 and 9141; German pp.9238/39), and he has pointed to the fact that the minutes of the Commercial Committee (Prosecution Exh. 362, NI- 4927, doc.bk. 14, English page 1, German

page 1, and Prosecution Exhibit 363, NI-4969, doc.Bk.14, English page 9, German page 11) which deal with certain recommendations relative to the political reliability of officials of the foreign agencies of Farben constitute so-called window-dressing because just at that time Goering and other Nazi functionaries had threatened to take sternest measures against companies which, because they lacked in Nazi ideology, had not yet carried through arymanization in their foreign agencies. It is significant, that in the same meeting of the Commercial Committee to which the Prosecution Exhibit 363 makes reference the defendant Schmitz introduces Philipp, the Jewish Director General of Dynamit A.G. Nobel in Pressburg, personally which shows plainly that this memorandum as far as it has bearing on the political reliability of the officials in Farben's foreign agencies is mere window-dressing.

Haefliger knew nothing of the alleged espionage activity of Farben foreign agencies (compare his direct examination, English transcript 9141, German page 9239). Reference in all other aspects of this entire range of questions is made to the statements of the Defense in the case of the defendant Ilgner; this to avoid repetitions.

In this connection brief reference is made to the arguments of the Prosecution in its Preliminary Trial Brief, Part I, page 60 (Czechoslovakia) and page 69 (Latin America).

The Prosecution has submitted as Exhibit 833, NI 6221, Doc.Book 46, Engl. page 29, German page 31, a memorandum on a conference of leading Farben functionaries on 17 May 1938 regarding

measures in Czecho Slovakia which it interprets as preparatory economic measures for the annexation (Anschluss) of the Sudetenland. In addition the Prosecution submitted as Exhibit 1812, NI-6073, Doc.Bk. 46, English page 23a, a memorandum on a Commerce Committee meeting of 24 May 1938 in which Haeffliger was present and in which the persons present were handed a copy of the minutes of the preceding conference. In the opinion of the Defense the Prosecution Exhibit 833 does not justify the inference drawn by the Prosecution to the effect that Farbon took an active part in bringing about the annexation of the Sudetenland. The predominant view-point throughout the discussion was merely to take certain preparatory economic measures in the event of annexation (Anschluss).

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so as not again to be taken unwere by developments, as was the case with Austria. This is being unequivocally confirmed by the witness for the Prosecution, Frank-Fahle, in his direct examination (English transcript 2034, German page 2023, in which he declares the Farben did not wish to face a peaceful annexation (Anschluss) of the Sudetenland unprepared.

the Prosecution

This refutes the presentation made by/in dealing with Count I of the Indictment in its Preliminary Trial Brief page 60, of the meaning and the objective of the meeting of 19 May 1938 under discussion, quite apart from the fact that the annexation (Anschluss) of the Sudetenland, based on the Munich Agreement, undoubtedly does not constitute an act of aggression in the meaning of the IMT verdict.

Again, the Prosecution in its Preliminary Trial Brief, Part I, page 69, mentions a report to the Commercial Committee on the South-American question in the fall of 1938, where the argument is brought forward that this report had been discussed in the conference of the Commercial Committee on 7 October 1938 (Prosecution Exhibit 894, BG-5077, Doc. bk. 48, English page 102, German page 157); here the statement is in order that, as this exhibit shows, the text of the above mentioned report cited by the Prosecution on page 69 of its Preliminary Trial Brief, Part I, was not the subject of the discussion.

Another quotation on page 69 of the Preliminary Trial Brief, Part I, of the Prosecution from Exhibit 894 on the caution to be applied in correspondence with South-American agencies of Farben does not justify the inference

that in this region Farben made preparations of any kind for a German war of aggression. As regards all other aspects of this range of questions reference is made to the examination of Overhoff, a witness for the Prosecution (English transcript 8782 and following, German page 5602 ff).

If the Prosecution on page 71 and 71a of its Preliminary Trial Brief, with regard to Count I of the Indictment refers to

Exhibits 929, NI-5950, doc.bk. 3, Engl. page 105, German page 148,
930, NI-1447, " " 49 " " 107, " " 151,
and 931, NI-5951, " " 49, " " 108, " " 153

in which the question of placing counter-intelligence personnel in foreign Farben agencies is being dealt with, this by and large involves Exhibits of memoranda covering conferences and/or letters which date from the months of April and May 1940, in other words, the time after the outbreak of the war so that an inference of a preparation for a war of aggression by means of espionage activity is not in order. The fact that the defendant Hoeffliger attended the Commercial Committee conference dealt with ⁱⁿ the Prosecution Exhibit 929 consequently does not constitute an incrimination for him, according to the meaning of the Indictment.

Finally, as regards the subjective facts, namely the defendant Hoeffliger's knowledge of the aggressive intentions of the Nazi regime, a series of circumstances were mentioned above, which point to the lack of such knowledge. This comprises above all the grant, referred to above, of licenses abroad for processes involving Farben products of strategic importance as well as the agreement-negotiations in the sector of heavy chemicals.

How little Haefliger thought^{of war}, still less of a war of aggression is shown by the way in which he handled the Chlorate project until shortly before the outbreak of the war in the U.S.A., a project which had the establishment of an American company for the production of Chlorates in the State of Oregon as its objective. This project was based on cooperation between Germany and France as licensors on the one hand, and the United States as licensee and manufacturer on the other hand, in which connection Haefliger also had in mind a future expansion of this American enterprise for the production of synthetic phosphoric nitrogen fertilizers for the benefit of American agriculture, an idea the realization of which required many years of patient painstaking work. In this respect reference is made to the direct examination of Haefliger (Engl. transo.p.p.9135 - 9137, German trans. pages 9234-9236).

Furthermore, in this connection, attention is also drawn to Exh. 46, Haefliger Doc.No. 53, Doc.Book IV, English and German page 13, affidavit by Karl von Heider, comments on Haefliger's way of thinking about war and that of Leber-Andreas the head of the Sales Combine for Chemicals, von Heider stating that both gentlemen gave the idea of a war of aggression any thought and, in support of this fact, he lists a series of resolutions by the Chemicals Committee during the period after the Munich Conference, in September 1938, for which the preservation of peaceful trade relations with foreign countries was the preliminary requirement and which, therefore, would have been consensual had the members of the Chemical Committee - the defendant Haefliger among them -

pages 12206 et seq.)

believed in a war, particularly a war of aggression.

Reference in this respect is furthermore made to Exhibit 48 Haeffliger Doc. 55, Doc. BK IV, English and German page 25, affidavit by Karl von Heider, which deals with the relations between Farben and the Solvay Works in Brussels and/or Bernburg and the conclusion of a long-term agreement, as late as 12 December 1938, in a very important field of chemistry. This agreement is an additional proof that none of the participants thought of the outbreak of a war.

Finally, in his direct examination (Engl. transcript pp.9142 and 9143, German page 9241 and 9242) the Defendant Haeffliger himself made a statement on this question to the effect that he never believed in Hitler's designs of aggression and that from Hitler's addresses of that period as well as those of other government functionaries and from the German press he had gained the opposite impression.

When considering this evidence in conjunction with the personality as a whole of the Defendant Haeffliger as depicted under I of this Trial Brief - a man thoroughly imbued with democratic and peace-loving ideas - there can be no doubt in the opinion of the Defense, that the Prosecution has failed to prove that Haeffliger had knowledge of Hitler's aggressive plans and consequently knowingly took part in the preparation for a war of aggression.

In summing up the Defense Counsel of the Defendant Haeffliger, therefore, takes the stand that

the Defendant Haeffliger should be acquitted on Count I
of the Indictment.

IV. Argument on Count II of the Indictment.

As regards the general assessment of Count II of the Indictment in the light of the law, reference is made to the arguments of the Defense on behalf of the Defendant v. Schnitzler.

At the outset it is pointed out that according to the ruling announced in the afternoon session of the Tribunal on 22 April 1948, the evidence introduced by the Prosecution for the alleged cases of spoliation in Austria and Czechoslovakia is inadequate for a conviction of the Defendant even if the proof of spoliation had been given fully, because delicts against property do not constitute a crime against humanity and, on the other hand, war crimes could not be committed in these territories as the latter were not under Germany's military occupation.

There is no more need, therefore, for the Defense to give further consideration to the evidence introduced by the Prosecution on the cases of Austria and Czechoslovakia; nor is this necessary in connection with Count I of the Indictment since not a single document submitted in evidence establishes proof for the knowledge and participation of any one of the defendants in preparations for a war of aggression.

According to the same ruling of the Tribunal a common plan or a conspiracy as an independent legal act is precluded as far as war crimes and crimes against humanity are concerned. From this it follows that in order to bring about the conviction of a defendant under Count II the Prosecution must establish proof ~~that~~ that defendant personally participated ⁱⁿ the individual crime charged and that he had knowledge of all details. There can be no so-called joint responsibility for all defendants for the offenses charged under Count II. As has already been shown such a joint responsibility is to be refuted also by reason of the fact that in the case Farben the responsibility of each member of the Vorstand was specifically restricted to the scope of tasks assigned to him. The defense, therefore, adopts the attitude that the defendants cannot be held responsible for alleged cases of spoliation in spheres outside of their own sphere of business over which they exercised control.

Defense Counsel for the Defendant Haeffliger will present its arguments below on the specific crimes under Count II of the Indictment. This involves - after elimination of the cases of Skoda-Wetzlar and Aussig-Palkenau - the cases of Norsk Hydro, Poland, Oxigen Plants Alsace-Lorraine, Francolor and Russia. In presenting these arguments the defense of the defendant Haeffliger has arranged with the defense counsels for the remaining individual defendants affected by the acts of spoliation alleged by the Prosecution that, in order to provide

a simplified survey to the Tribunal each defense counsel shall provide a complete argument covering the entire evidence introduced on a definition of the case, all the evidence submitted on one crime and the evaluation thereof. For this reason the various defense counsels have divided among themselves the range of charges preferred under Count II; this should not, of course, be construed to mean that their clients are to be considered as the principals in that particular series of charges.

A. N o r s k H y d r o .

According to the distribution of themes this matter will be handled by the defense counsel for the Defendant Ilmer. The Defense for the Defendant Heefliger, therefore, confines itself to a brief presentation of that part which he personally played in the negotiations.

Not until the early part of 1941 was the Defendant Heefliger introduced into the negotiations with Norsk Hydro for the founding of a new company, for the purpose of creating a magnesium plant in Norway in which Norsk Hydro was to have a 49% and Farben 51% participation, after Aubert, the Generaldirektor of Norsk Hydro, had approached the Defendant Kraush with the object of ^{avoiding} avoiding together with the German Reich or a company controlled by the German Reich, which had been the wish of the Reich at that time.

The Defendant Heefliger was introduced into the negotiations only after the founding of the previously mentioned new company had been fundamentally decided upon by the interested parties (cf. Heefliger's direct examination, Engl. transcript p.9181, Germ.p.9283.)

His cooperation in the preparation of the contracts was confined to strictly commercial points, such as

the stipulation of the license fees for the Farben processes and patents, arranging sales provisions for magnesium metal after the plant was put into operation, etc. (cf. direct examination of Haeffliger, Engl. transcript 9182, German p. 9284). Haeffliger had nothing to do with the financial questions which came up in the negotiations (cf. his direct examination, Engl. transcript p. 9182, German p. 9285).

As the Defendant Haeffliger also testifies in his direct examination (English transcript 9184, German page 9287), the proposed agreement was not signed since the Reich Delegate Dr. Koppenberg suddenly stepped in to take action in the matter and demanded that the Reich be a party to the new company, the Nordisk Lettmetall. Farben could not ignore this demand because otherwise, with the requirements of waging a war prevailing it would have had to expect stringent measures by the officials concerned against those participating, which measures also would have had serious repercussions for Farben's light metal sphere (cf. direct examination of Haeffliger, Engl. transcript p. 9185, German page 9288).

The only tendency which Farben could pursue and which it also did pursue in the ensuing negotiations with the Reich was to salvage as much of the Norsk Hydro contract as could be salvaged and to restrict the influence of the Reich in Nordisk Lettmetall.

In this respect reference is made to a description given by Haeffliger in his direct examination of the negotiations with the Reich (Engl. transcript pp. 9186 and 9187, German pages 9288-9290).

Further attention is also drawn to Prosecution Exh. 587, NI-8144, Doc. Sk. 65, Engl. p. 45, German p. 93, and to the cross-examination of Meyer-Wegelin, a witness for the Prosecution (Engl. transcript pp. 3087-3101, Germ. pp. 3111-3120).

These very negotiations which were condensed in Prosecution Exh. 587 already referred to, i.e. a memorandum on the discussion in the Reich Air Ministry on 6 February 1941, prove convincingly the stand taken by the Defendant Haeffliger on questions involving the acquisition of participations in occupied territories. Prosecution Exh. 587 shows that Haeffliger advocated in a manner which cannot be misunderstood, an appreciable participation by Norsk Hydro in the new company, on the grounds that Norsk Hydro had made available for the new company valuable territory suitable for expansion of their own plant in Herøen, thereby giving up other expansion plans in Herøen. Exhibit 587 also reveals that the Reich participation initially proposed by Farben was only 20%; this, however, was rejected by the representatives of the Reich as being entirely unworthy of any discussion. The Reich demanded for itself a participation of 51% and eventually an understanding was reached on the basis of a participation in the new company of one third each, for Farben, Norsk Hydro and the Reich.

It is worthy of note that Haeffliger - as is seen from Exhibit 587 and from the cross-examination of Meyer-Wegelin - forced concessions from the Reich for the benefit of Norsk Hydro, namely, on the one hand, the offer to Norsk Hydro of a proportionate participation in a hydrogen factory to be erected

somewhere else in Norway, in compensation for its reduced participation in Nordisk Lettmetall and, further, that as soon as its requirements of magnesium had been sufficiently covered, the Reich would be prepared to surrender its participation again,

With regard to the attitude adopted by Norsk Hydro in respect of the new participation proposal in the Nordisk Lettmetall, Haefliger in his direct examination (Engl. transcripts 9188, German page 9290) states that without hesitation ~~Norsk~~ Norsk Hydro appreciated that the new basis was the best Farben could obtain and that consequently it gave its consent.

In this connection attention is drawn to Exh. 37, Haefliger Doc. No. 43, Doc. Book III, English and German page 65, which is a circular letter written by Haefliger to the members of the Chemicals Committee on 5 May 1941 and in which Haefliger on the above-mentioned negotiations in the Reich Air Ministry on 6 February 1941 says the following:

"We succeeded, in particular, in having the Norwegian foundation kept within the limit of the existing Norwegian laws. Thus force has been avoided and the Norwegian Group was persuaded to join voluntarily. This was also mentioned by Generalkdirektor Aubert at a small dinner party in commemoration of the foundation which was also attended by the Reich Commissariat. On this occasion Dr. Koppenberg spoke too and used expressions which surprised us all and moreover in an extremely favorable way."

End of quotation.

In the opinion of the Defense it follows clearly from this that there can have been no question of the exertion of pressure by Farben on Norsk Hydro when the Nordisk Lettmetall was founded, and that, on the contrary, it was the

Defendant Haefliger who did everything possible to obtain the best terms which could be obtained in the prevailing circumstances. It is not appropriate, therefore, to speak of a conflicting ideas on the part of Farben and Norsk Hydro but rather of a united front by these two establishments towards the aspirations to influence by the German Reich. This fact in itself proves that the Prosecution's claim that the establishment of Nordisk Lettmøtall involved plunder and spoliation of Norwegian property by Farben, is utterly untenable.

The Defense Counsel for the Defendant Haefliger submits that in the light of the afore-mentioned evidence, the person of the Defendant Haefliger - and of course equally the person of all the defendants - is not implicated in either the objective or the subjective crime of plunder or spoliation in the establishment of the Nordisk Lettmøtall.

With regard to the subscription privilege of the French stockholders' group incidental to the increase of capital of Norsk Hydro, the Defendant Haefliger has declared that he was not concerned with this matter, i.e. the entire range of questions, connected herewith (of direct examination of Haefliger, Engl. trans. p. 9189, German p. 9292). In this connection it should be stressed that Haefliger was a member neither of Styre (Vorstand) nor of the Aufsichtsrat of Norsk Hydro. The Defense, therefore, submits that no charge can be made against the Defendant Haefliger on that score,

. P o l a n d .

In view of the distribution of themes among the defense counsels this range of questions will be handled by the Defense Counsel for the Defendant v. Schnitzler. The Defense for the Defendant Haeffliger, therefore, restricts itself in the case of Poland to a few brief statements concerning such of the Prosecution exhibits in which Haeffliger's name is mentioned.

In Preliminary Trial Brief of the Prosecution, Part II, the following is stated on page 16; quotation:

"We have shown that as early as September 7/14, 1939, defendants von Schnitzler and Haeffliger and other Farben officials contacted the Reich Ministry of Economics."

End of quotation.

In this respect it should be said first of all, that the two above mentioned letters were neither addressed to the Defendant Haeffliger nor signed by him nor can it be seen from the letters that he received copies. The teletype message of 7 September 1939 was signed by the Defendant von Schnitzler and addressed to the Directorate Department Dyestuffs; the letter of 14 September 1939 was signed by the Defendant v. Schnitzler and by the witness Krueger and it was addressed to the Reich Ministry of Economics.

Quite evidently the above contention of the Prosecution with regard to the Defendant Haeffliger is correlated with Prosecution Exhibit 2003, NI-2969, a memorandum for the Defendant Dr. Kugler which makes mention of a visit by Haeffliger to Dr. Hoffmann of the Reich Ministry of Economics, on 9 September, 1939. In this conference the question of making exports available

✓ for the maintenance of the commercial and technical operations of the Polish dyestuffs plants falling into German hands was allegedly discussed. The memorandum further mentions that Regierungsrat Hoffmann had been informed that the Defendant v. Schnitzler would come to Berlin the following week and that then the matter could be discussed with him (Hoffmann) personally by v. Schnitzler. As the last paragraph of the memorandum shows Haefliger informed v. Schnitzler to that effect.

The wording of the memorandum clearly shows that Haefliger's connection with that memorandum was confined to making an appointment for a discussion for the Defendant v. Schnitzler at the Reich Ministry of Economics. As this involves ^{matters} relating strictly to the Dyestuffs Sparte which was not under Haefliger's jurisdiction, there can be no question of Haefliger's actively stepping into the for negotiations for the acquisition of Polish plants and for the appointment of trustee for such plants. (cf. Haefliger's direct examination, Engl. trans. p. 9177, German v. 9287).

As he stated in his direct examination, Haefliger did not take part in subsequent negotiations relative to Polish factories. (English trans. p. 9178, German p. 9279). Haefliger's version is confirmed by Exh. 36, Haefliger Doc. No. 44, Doc. Book III, Engl. and German p. 67, Affidavit by Dr. Alfred Hoffmann, in which the latter explicitly states that he cannot remember Haefliger's having participated in negotiations dealing with the appointment of trustees for the Polish dyestuffs factories.

In his direct examination (Engl. transcr. p. 9178, German pages 9279 and 9280) Haeffliger has furthermore stated that he did not know of the report on the most important chemical firms in Poland (Prosecution Exh. 1135, NI-9151, Doc. Book 55, German p. 82). Finally, he stated that while, according to his recollection, the Defendant v. Schnitzler did report in a Commercial Committee meeting on the founding of a cover company (Auffanggesellschaft) for Polish dyestuff factories in distress to set on a trusteeship basis and while in a meeting of the Vorstand a report was made on the leasing of the Boruta plant, he had never heard of an acquisition or the intent of acquiring Polish plants (cf. direct examination Haeffliger, Engl. transcript p. 9178, German p. 9280).

As far as Prosecution Exhibit 1966, NI-1160 is concerned, this was a memorandum of October, 1939, which was prepared on the basis of a telephone conversation between Haeffliger and the Defendant Buergin and which dealt with some chemical businesses in Poland. In his direct examination (Engl. transcript page 9179, German page 9281) Haeffliger has declared on oath that Farben was never interested in the firms mentioned in the memorandum and that these firms were never taken over by Farben. In that respect reference is made to the testimony of the Defendant Wurster who, in his examination, (English transcript page 11125, German page 11365) stated that the Chemicals Committee was at no time interested in the acquisition of chemical enterprises in Poland.

In accordance with its above statements the defense for the defendant Haeffliger is of the opinion that the defendant, Haeffliger, was never involved in participating in the alleged spoliation or the alleged plunder of Polish factories, and also that he did not in any way actively contribute to the acquisition of Polish property by Farben.

For this reason it is the opinion of Haeffliger's defense that he should be acquitted of the charges in the case of Poland.

C. Alsace-Lorraine Oxygen Plants.

According to the agreement reached among the defense counsels this complex is handled by defense counsel for the defendant Jaehne, hence reference may be made to the explanatory statements in his trial brief.

Regarding Haeffliger's participation in this complex, it is pointed out that the prosecution in the evidence introduced did not associate Haeffliger personally with this transaction. At no time was Haeffliger concerned with the negotiations concerning these plants, since the entire matter, in so far as its business aspects were concerned, was handled by the director of the Chemicals Sales Combine

Weber-Andreas personally. Haeffliger himself had no knowledge at all of the transaction; he was only informed of the details thereof in the course of the trial at Nuremberg. In this respect reference is made to Haeffliger's statements in his direct examination (Engl. transcript, pages 9192 and 9193,

German Pages 9296 and 9297) which are confirmed by the affidavit of the lawyer for the Chemicals Sales Combine, Dr. Heinz Mayer-Wegelin (Haeffliger Document 45, Exhibit 30, Document Book III, Engl. and German page 63); the latter states that the business aspects of the transaction were handled, besides Herr Weber-Andreac, by Herr Walther Ludwig, formerly Prokurist of the Chemicals Sales Combine under Herr Weber-Andreac. This testimony of the witness Mayer-Wegelin is confirmed by the affidavit of the afore-mentioned Walther Ludwig (Haeffliger Document 59, Exhibit 52, Document Book IV, Engl. and German page 39); the latter states that Haeffliger was not competent for the handling of this transaction.

Thereby it is clearly established, that Haeffliger cannot be connected with the leasing or acquisition of the oxygen plants in Alsace-Lorraine, and hence he bears no responsibility in this respect.

D. Francolor.

This complex will be handled by defense counsel for the defendant von Schnitzler, and reference is made herewith to the statements continued therein.

In his direct examination (Engl. transcript, pages 9191 and 9192, German pages 9294-9296), Haeffliger states that he, was not concerned with the transaction, since it fell exclusively into the sphere of dyes (Farben Sparte) with which he had nothing to do. He had never taken part in any negotiations whatsoever.

EXHIBIT 103

He states that he was only informed of the whole matter in broad outlines; he had no knowledge of details of the negotiations. In any case the prosecution did not produce any evidence to show that Haefliger had any special means of knowing that the Francolor transaction was as the prosecution-maintained - legally not unobjectionable.

with
In conjunction with this Haefliger replied to a relevant question of the defense counsel in his direct examination (Engl. transcript, page 9192, German page 9295), stating that he, as a business man (Kaufmann), and not being a lawyer, did not feel in a position to judge the legality of such a transaction from an international law view-point, and that in this respect he relied upon the lawyers of Farben. As an example of his ignorance of provisions of international law he points out that he only read the Hague Rules of Land Warfare in 1945 after the occupation of Frankfurt. Furthermore, reference is made in this connection to the statements in the Closing Brief of defense counsel for the defendant Schmitz, relating to the awareness of the illegality of cases of plundering, especially in the case of purchasing property confiscated by the State.

The defense is of the opinion that this statement by Haefliger constitutes an important exonerating circumstance for him, not only in the Francolor affair, but also in all other alleged cases of plundering, since criminal responsibility in this connection presupposes knowledge on the part of the defendant that the contract constitutes a so-called case of spoliation or plunder. The defense holds that merely from the viewpoint the defendant Haefliger must be acquitted of the charge of participation in alleged cases of plunder by Farben.

E. Rhone - Poulenc.

This complex will be handled by the defense for the defendant Mann, and reference is made herewith to their explanatory statements.

The prosecution did not connect the defendant Haefliger personally with this alleged case of plunder, and it did not introduce any exhibit which shows Haefliger's participation in this transaction. Hence in the opinion of the defense it suffices to point out that this transaction lay entirely outside the business sphere in Haefliger's charge; this was exclusively an affair of the Pharmaceutics Sales Combine.

P. Russia.

The Russia complex will be handled by the defense for various defendants, especially by the defense for the defendants Krauch, Buotofisch, Mann and Buergin, and reference is made herewith to their explanatory statements.

The following general remarks may be made relative to this complex:

The prosecution did not introduce any evidence in document books 63 and 64 to show that any of the so-called Eastern Combines (Ost-Gesellschaften), in which Farben held capital shares, had taken property out of Russia or had acquired Russian plants as their property. All evidence presented by the prosecution relates only to the establishment of the Eastern Combines and the tasks which the German Reich intended for them, that is, the trusteeship administration for the duration of the war of the Russian State plants confiscated by the German Reich.

In the statements of the prosecution's preliminary trial brief, Part II, Engl. page 12 ff, only such actions of Farben are listed as are related to the organization of the new Eastern combines and the trustee tasks entrusted to them for the future. Hence the defense basically takes the view that even if one presupposes that Farben pursued any unfair designs in Russia which is emphatically denied, in fact no attempted, far less completed execution of such designs occurred; thus for this reason alone the entire material submitted by the prosecution in the Russia complex is legally irrelevant.

Reference is also made to the judgment of Tribunal IV in Case 5 versus Flick et al. (Engl. transcript, page 11005, German page 10750), where it is pointed out that the trusteeship administration of Russian government plants by German industrialists during the war does not constitute a violation of the Hague regulations and is therefore not a war crime; quote:

"These activities stand on a different legal basis from those at Rombach. Both properties belonged to the Soviet government. The Dnjopr Stahl plant had been used for armament production by the Russians. The other was devoted principally to production of railroad cars and equipment. No single one of the Hague regulations above quoted is exactly in point, but, adopting the method used by DIT, we deduce from all of them, considered as a whole, the principle that state owned property of this character may be seized and operated for the benefit of the belligerent occupant for the duration of the occupancy. The attempt of the German government to seize them as the property of the Reich of course was not effective, title was not required nor could it be conveyed by the German government. The occupant, however, had an usufructuary privilege. Property which the government itself could have operated for its benefit could also legally be operated by a trustee. We regard as immaterial Flick's purpose ultimately to acquire title. To swot is a sin under the Decalogue but not a violation of the Hague Regulations nor a war crime."

End of quoted passage.

In this connection reference is again made to Article 55 of the Hague Rules of Land Warfare,

As for the Eastern combines concerned with the chemical sector, viz. the Soda- and Aetzalkalien Ost G.m.b.H. and the Chemie Ost G.m.b.H., it may be stated that the first of these companies is being dealt with ^{by} the defense for the defendant Buergin. Both companies were pure trustee combines (Betrouungs-) according to the survey report of the Eastern Liaison office for Russia, introduced as prosecution exhibit 1175, NI-2996 Document Book 63, Engl. page 37, German page 33. It was the special task of the Chemie Ost G.m.b.H. to supervise the trustees assigned in the individual plants and to assist them in an advisory capacity; the report specially emphasizes that the company was not active yet, but was simply limiting itself to the preparation of expected tasks. Hence the evidence presented by the prosecution does not indicate any active operations of the Chemie Ost G.m.b.H. which might constitute plunder of Russian property or even an attempt at such plunder. In addition, according to the above-mentioned exhibit of the prosecution Farbon only had a 5% capital share in the Chemie Ost G.m.b.H., thus Farbon's capital-share influence in this combine did not carry any effective weight.

In his direct examination Heffliger himself states (English transcript, page 9195, German pages 9297 and 9298) that he had nothing to do with any of the organizations concerned with the East, in particular the Continentale Oel A.G., the Chemie Ost G.m.b.H. and the Soda- und Aetzalkalien Ost G.m.b.H.,

especially and that he was not a member of the so-called Eastern Committee (Ostauschuss) of Farben of which he does not even know whether it ever met. Haefliger further stated that to his knowledge Farben never took over or became a partner in chemical enterprises of the East. He only knew of the establishment of a common sales office in Riga.

Nor can anything to the contrary be deduced from exhibit 1998, NI-14530, exh. 1997, NI-14529 and exh. 1998, NI-14551 submitted by the prosecution. The matter at hand was a correspondence between Haefliger and Direktor Ziegler in Bitterfeld, who dealt with Farben's interests in the light metal sector in Russia. This correspondence clearly shows that in the opinion of the then Reich Economic Ministry it was out of the question of that a 'Auffanggesellschaft' (company established for that purpose) should take over Russian light metal factories or that the Russian light metal plants should be reconstructed. Hence this correspondence does not indicate in any way that Farben took over or became a partner in Russian plants in this sector.

Reference is also made to the interrogation of the witness Kurt Krueger (Engl. transcript, Pages 4694 ff, German pages 4706 ff) relative to the establishment of the so-called Eastern combines and the functions of the Eastern Committee of Farben or its successor, the so-called Russia committee.

The above shows that the defendant Haefliger cannot be charged in with participation/plundering Russian property.

In conclusion of the statements relating to count II of the indictment reference should also be made to an incident in which the defendant Haefliger played a decisive part, and which strikingly contradicts the contention of the prosecution, viz., that Farben systematically endeavored to plunder the territories controlled by Germany. This concerns the case of the Petsamo nickel mines in Finland, which was discussed by the defendant Haefliger in his direct examination (Engl. transcript, pages 9195 and 9196, German pages 9298-9300).

The owner of the concession for these nickel mines was the Canadian International Nickel Company ("INCO"), Toronto and their English subsidiary, the Mond Nickel Company Ltd., London. The mines were operated by their Finnish subsidiary, the Petsamon Nikkeli O.Y. In 1940-1944 various negotiations on the delivery of nickel from the afore-mentioned mines took place between German and Finnish official agencies in the course of which Farben too, was included with the personal participation of Haefliger. There the official German side expressed its desire to persuade the Finnish government to withdraw the concession to the INCO/Mond Group and to transfer it to a German-Finnish combine. (Gesellschaft). It was the defendant Haefliger who opposed this desire out of consideration for the old friendly relations of Farben with the INCO/Mond group, and who also saw to it that the property rights of the Canadian-English group to the mines and also to the installations already existing or under construction were not withdrawn and also that their concession was not affected. In addition, Haefliger saw to it that

the exploitation of the mines was carried out according to rational mining and business viewpoints, avoiding robbing of the mine and that the Finnish company was paid a reasonable price for the nickel delivered.

Besides Haefliger's personal testimony these events are confirmed by Haefliger Document 46, Exhibit 39, Document Book III, Engl. and German page 72, affidavit of Dr. Hilger von Scherpenberg, and by Haefliger Document 47, Exhibit 40, Document Book III, Engl. and German page 75, affidavit of Finnish citizen Freiherr Gustaf Woldemar Wrede.

The above described events constitute proof of Haefliger's attitude to the question of handling enemy property in war-time in such a way as to exclude any suspicion of intended plundering. In the opinion of the defense one cannot believe that a man who carries such an attitude into his daily life is capable of taking part in plundering.

In conclusion, therefore, the defense takes the view that the defendant Haefliger should be acquitted of count II of the indictment.

V. Re.: Count III of the indictment.

In considering Haefliger's responsibility under this count of the indictment the defense may express itself briefly.

The prosecution did not connect the defendant Haefliger personally with any of the facts defined under this count. In particular, the prosecution did not introduce any exhibit directed against Haefliger personally which concerned count^{III} of the indictment.

The prosecution rather held Haefliger responsible for this part of the indictment simply on the grounds of the alleged joint responsibility of all Vorstand members for all matters pertaining to Farben. It has already been explained above that such joint responsibility does not exist in a legal sense. Here too it should be pointed out that, according to the ruling of the Tribunal the interpretation under criminal law of a conspiracy was not applicable to count III of the indictment.

The prosecution therefore had to prove that the defendant Haefliger personally took part in the crimes defined in the indictment. This assumes Haefliger's knowledge of such criminal facts, and, in addition, a certain amount of active participation in their perpetration.

But the prosecution did not produce such evidence, as has already been pointed out above.

As the defendant Haefliger stated in his direct examination (Engl. transcript, pages 9198 - 9203, German pages 9305 -

9307), as a business Vorstand member in the Chemicals Sales Combine he never had anything to do with questions of labor procurement or with questions of the treatment, allocation and supervision of workers in the Farben plants. He had no influence whatsoever upon such questions, since he, unlike many other defendants, was not a Betriebsführer (manager) of ^{any} one of the Farben plants nor was he a member of any other Farben bodies (Gremium) which were concerned with the allocation and supervision of workers and with other social questions. Moreover, he did not take part in conferences such as, for example, the Betriebsführer conferences of Farben, where such questions were discussed. Neither did the defendant Haefliger ever discuss such questions on the occasion of visits to the Bitterfeld plant, which was under the defendant Burgin, its Betriebsführer.

Since questions of foreign labor allocation and their treatment were not discussed at the meetings of the Vorstand, the business committee and the chemicals committee in which the defendant Haefliger took part, and since the defendant only took part in meetings of the Technical Committee occasionally as a guest and only for the duration of technical lectures the defendant's knowledge of the allocation and treatment of foreign workers in the plants of Farben was then extremely incomplete and in any case not of such a nature that he could be charged with participation in any alleged crime whatsoever (cf. direct examination Haefliger, Engl. transcript, pages 9198-9205, German pages 9303-9307).

The same pertains to the allocation of concentration camp (KZ) prisoners and of POWs in the plants of Farben. In his direct examination (Engl. transcript, pages 9201-9203, German pages 9306 and 9307) the

defendant Heffliger stated that he learned of the allocation of concentration camp (KZ) prisoners in Farben plants, especially in Auschwitz, only in the course of this trial, and ^{that} he was not informed of the details of the allocations of POWs in Farben plants. Nor had he ever heard through conversations with his colleagues or otherwise of any bad treatment of foreign workers, POWs or concentration camp (KZ) prisoners. The same applies to the alleged experiments upon humans and gassings.

In the cross-examination of the witness Strussmann 5 May 1948, the prosecution introduced as Exhibit 2343, the Document NI-6645, affidavit of Struss which deals with the alleged knowledge of all Vorstand members regarding questions concerning the allocation of concentration camp (KZ) prisoners in Auschwitz.

In the opinion of the defense this affidavit does not constitute reasonable proof, of the alleged knowledge of the defendant Heffliger concerning this question. The witness Struss concludes such knowledge from the credit grants of the Vorstand for the Auschwitz plant. But this is merely a supposition by the witness and not direct proof of knowledge on the part of defendant Heffliger. In view of the global form which the presentation of such credits to the Vorstand, took as proved by the evidence submitted by the defense, this does not allow the definite conclusion that all Vorstand members were informed of the allocation of concentration camp (KZ) prisoners in Auschwitz, and especially - and this is the primary consideration for a legal judgment on this count - of the modality of this allocation, i.e. the question on

whose initiative the allocation was carried out, and of the treatment of the concentration camp (KL) prisoners.

If the witness Struss also speaks in his affidavit of the verbal report of the defendant Ambros in the Technical Committee concerning the utilization of concentration camp (KL) prisoners in Auschwitz, the defendant Heffliger - as pointed out already - took part in the discussions of the Technical Committee only occasionally as a guest and only for the duration of technical lectures; so that from this it cannot be definitely concluded that he also heard this report of the defendant Ambros. But even if this had actually been the case, it still would not indicate that Heffliger had been informed of the above-mentioned modality of the allocation or of the treatment of the prisoners. Moreover, the defense holds the view that the assertions of the prosecution in this direction are invalidated by the evidence submitted by the defense counsels for the defendants Ambros and Duerrfeld.

If the witness Struss also speaks in his affidavit of the knowledge that people were killed in the Auschwitz concentration camp (KL-Lager), which knowledge he obtained during a visit in Auschwitz, this too can not serve to conclude any knowledge on the part of the defendant Heffliger of these occurrences. In addition, however, such knowledge would also be irrelevant in connection with count III of the indictment, since the killing of human beings in the Auschwitz concentration camp (KL) - i.e., not in the Mauthausen camp - occurred through the SS and without the participation of Farber; hence there is no doubt that Farber cannot be held responsible for this killing, they had no influence whatsoever in this direction and, therefore

could not prevent the killings either.

In considering the Vorstand's knowledge, as maintained by the prosecution, of the supply of poison gas for killing purposes in concentration camps, reference is made in this connection to the evidence submitted by the defense counsel for the defendant Mann in relation to the Degesch complex.

In his direct examination (Engl. transcript, page 9203, German page 9306) Haefliger stated that he only learned of gassings of concentration camp (KL) inmates after the capitulation. The prosecution produced no evidence to show that Haefliger might have had any knowledge of or anything to do with the alleged supply of poison gas for such purposes by the Degesch. Consequently this charge also is eliminated.

Relative to the question of knowledge of atrocities in the Auschwitz concentration camp (EZ), reference is also made to the testimony of the witness, Dr. Karl Muench, on 11 May 1948 (Engl. transcript, pages 14328-14330, German pages 14666-14668).

In the opinion of the defense it is herewith clearly established that the defendant Haefliger, cannot in the absence of knowledge and participation be made responsible for the crimes maintained by the prosecution under count III.

Therefore the defendant Haefliger must also be acquitted
of the charges of count III of the indictment.

VI. Re: Count V of the indictment.

The defendant Haeffliger has not been charged under indictment count IV, hence further statements on this count are superfluous.

Regarding count V, of the indictment, the prosecution has not even introduced evidence which proves a conspiracy of the defendants to commit crimes against the Peace, let alone proof for Haeffliger's participation in such a conspiracy. In his direct examination Haeffliger stated in this connection (Engl. transcript, page 9304, German page 9308), that, for lack of knowledge of the aggressive plans of the Nazi government, he could not have taken part in such a conspiracy, and that such a conspiracy never existed among the defendants. In this connection Haeffliger rightly points out that the fact, that he, as a Swiss citizen and one-time Swiss Consul, belonged to the Vorstand of Farbion, is the best proof that the promotion of the aggressive plans of the Nazi government was never discussed in the Vorstand.

Therefore the defense holds that the defendant

Haeffliger must similarly be acquitted of the charges of
count V of the indictment.

CERTIFICATE OF TRANSLATION

15 June 1948

We, John POSBERRY, No. 20179, Gerta KANNOVA,
No. 20151, hereby certify that I am thoroughly von-
versant with the English and German languages and
that the above is a true and correct translation
of the Closing Brief Haefliger.

John POSBERRY
No. 20179

Gerta KANNOVA
No. 20151

(END)

Tim Brier Hayde (Emory)

Case 6
Defense

Trial Brief von der Heyde

T R I A L B R I E F

for

Dr. Erich von der Heyde

submitted

in

June 1948

by

Karl Hoffmann

Attorney-at-law

any



I N D E X

to

TRIAL-BRIEF FOR DR. ERICH VON DER HEYDE

- I. Documents referring to Dr. von der Heyde's work
as Referent for positions subject to deferment and
as counterintelligence agent, activities often simply
referred to as question M. p. 1 - 11
- II. Documents which refer to Dr. von der Heyde's
relations to the SS and the SD. p. 12 - 15
- III. List of documents presented by the prosecution (29)
and the defense (4) in the case Dr. von der Heyde
with the numbers of the pages on which they appear
in this trial-brief. p. 16

Trial Brief von der Heyde

The few documents of the prosecution which bear any relation to the defendant von der Heyde can be divided up into two groups:

- I) Documents referring to Dr. von der Heyde's activities as Referent for positions subject to deferment, and as counter intelligence agent, often simply referred to as question M (I-Frage).
- II) documents referring to von der Heyde's relations to the SS and SD.

I.

DOCUMENTS REFERRING TO DR. VON DER HEYDE'S ACTIVITIES AS REFERENT FOR POSITIONS SUBJECT TO DEFERMENT AND AS COUNTER INTELLIGENCE AGENT? OFTEN SIMPLY REFERRED TO AS QUESTION M.

- A) Dr. VON DER HEYDE'S ACTIVITIES AS SHOWN BY THESE DOCUMENTS.

- 1) Document II 762, Prosecution Exh. 250 contained in Doc. Book No. 9 shows under the codeword "question M", the two jobs worked on by Dr. von der Heyde in this field:
 - a) Matters referring to positions subject to deferment.
 - b) to a lesser degree counter-intelligence questions.

To a: The transcript of the 41st meeting of the KA (Commercial Cities) of 23 April 1941 shows that von der Heyde was given the task of finding out from the Central Offices of the Wehrmacht how many of the employees on the commercial enterprises and administrative offices of the I. G. could be given the "deferred" or "uk" status and thus be exempted from military service and retained for the I. G. plants. This had been a rather difficult problem already before and especially during the war, which concerned all private industrial plants in Germany as they were able to keep their efficient staff only if their employees were given deferred status.

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Von der Heyde had to look after deferred applications for the Berlin No 7 plant only and, therefore, exclusively for the regular German personnel of the IG Farben. (transcript German page 12688, English page ...) Von der Heyde was in no way concerned with the question of labor allocation (transcript German p. 7584, Engl. p.)

The fact that "question 4" and "labor-allocation" are mentioned in the transcript of the 45th meeting of the KA under the same heading, ought not to lead up to the assumption that there existed a connection between the question of labor-allocation and Dr. von der Heyde's office.

Apart from this fact, labor-allocation was discussed in this meeting of 7 January 1942 only with a view to German I. G. Farben personnel, a statement which can easily be proved by the fact that the transcripts speak only of commercial enterprises which employed exclusively German personnel.

to b: As far as the minutes contained in document NI-7621, prosecution exh. 250, Doc. Book 9 bear any relation at all to the counter-intelligence activities of Dr. von der Heyde under the specification "question M", they were again submitted by the prosecution as special exhibits, i. e. the minutes of the 32 d meeting of 17 April 40, as document NI-5950 and prosecution exh. 929 in Doc. Book 49, the minutes of the 32 d meeting of the KA of 27 May 1940 as document NI-5951 and prosecution Exh. 931 in doc. book 49, and finally the minutes of the meeting of 2 May 1941 referred to in the minutes of the 42 nd meeting of the KA of 8 July 1941 as NI-14271 and prosecution exh. 1904.

These parts of document NI-7621, Prosecution Exh. 250 which have been treated as independent documents will be dealt with together with other prosecution documents which will serve to establish the chronological and factual connection.

(page 2 of original)

In document-book 49 the prosecution has submitted the document NI. 7626 as prosecution-exhibit 927. This is a letter which the defendant von der Heyde has written to the defendant Dr. von Schnitzler on 30 March 1940. This letter shows quite clearly that the initiative in the sphere of the counter-intelligence service was exclusively in the hands of the authorities, i. e. the OKW and the RSHA, whereas the representatives of the I. G. Farben were very passive.

(page 3 of original)

and had, up to 30 March 1940, not even in a single case, complied with the wishes of the above mentioned offices. The OKW and the RSHA had, therefore, as this letter proves, resorted to open threats and had, with reference to the exigencies of the war at that time, threatened with a decree which was supposed to be issued by the highest authority. "Sincerely concerned about the interests of the I. G. Farben", Dr. von der Heyde therefore calls Dr. v. Schnitzler's attention to the displeasure of the OKW and the RSHA caused by the constant refusal of the I. G. Farben to comply with their wishes and suggests "for show" to fulfill their wishes to a certain extent in order "to avoid stronger pressure in the future" but strongly recommends refusal of collaboration of the I. G. Farben in case it should become unbearable.

Dr. von Schnitzler's answer, included in Document Book 49 as NI-3804 and also submitted as prosecution exhibit 928, proves that von der Heyde's position was a completely subordinate one. Without taking the trouble to inform him, Dr. von Schnitzler had contacted the OKW and discussed with them the question if and to what degree the "Society for Sales promotion" (Gesellschaft fuer Verkaufsforderung) could replace the I. G. Farben in fulfilling the demands of the OKW-counter-intelligence. This independent action of his superior proves that von der Heyde was not a centrally responsible official but was only a badly informed go-between.

Dr. von der Heyde's letter of 30 March 1940 was of no consequence whatever, as Dr. von Schnitzler proved himself to be far better informed, and had already diverted the danger anticipated by Dr. von der Heyde.

(page 3 of original)

It was therefore not necessary to bring von der Heyde into contact with Herr von Puttkamer as suggested by Dr. von Schnitzler, nor had he ever any dealings with the "Society for Sales Promotion". Von der Heyde was only once taken along by Dr. von Schnitzler to a discussion with Major Bloch, O.S., i.e. on 5 July 1940, NI 1450, Prosecution Exh. 934 Doc. Book 49, and that only just in case other matters would crop up.

The question of collaboration of German industrial enterprises abroad was discussed in the 31st meeting of the KA on 17 April 1940 under the heading "Question M". Here, von der

(page 4 of original)

Heyde duly made his report on the wishes of the OKW, already mentioned in the correspondence with Dr. von Schnitzler. The members of the KA carried on the delaying policy of the I. G. Farben and had as a quite obvious measure of precaution, entrusted Dr. von Schnitzler with the central regulation of the question, in order to prevent local blundering. Dr. von der Heyde was to prepare the necessary steps for Dr. von Schnitzler. The only additional point which was discussed under the heading "question M" was the deferred status about which von der Heyde also had to consent.

This is the most essential part of the contents of the minutes of 17 April 1940, which are contained in prosecution document NI-7621, exh. 250, and as well as having been submitted as a separate document NI-5950 as prosecution exh. No. 929. This report reveals the Commercial Committee (KA) in its hesitant and defensive attitude, and the defendant von der Heyde as a subordinate participant in this policy of resistance.

However, OKW counter intelligence, i. e. Major Bloch, put on pressure because of "higher points of view important to the Reich" so that von der Heyde had to ask Dr. von Schnitzler, who was then in Bad Kissingen for his health, to come to a decision about the future nature of cooperation with the OKW counter intelligence.

Dr. von der Heyde's letter dealing with this question has been submitted in doc. Book 49, as doc. NI-1447 and as prosecution exh. 930. It, too, proves decidedly how strong the pressure exerted by the OKW and how dissatisfied they were with the way I. G. Farben's negative attitude up to that time. Here too, von der Heyde is nothing more than the go-between for reporting the wishes of the OKW and develops no personal initiative whatsoever. The right of decision rests with his superiors in the I. G. Farben even in individual cases.

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The minutes of the 32 d meeting of the KA on 27 May 1940 to which he was called off and on as was customary give an especially clear picture of the subordinate position held by von der Heyde. These minutes are part of doc. NI-7621, Prosecution Exh. 250, and were also separately submitted as doc. NI 5951 and Prosecution Exh. 931 in Doc. Book 49.

Trials Brief von der Heyde

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Von der Heyde reported in this meeting concerning the subject of the "mobilization question" only about the present status and the probable development of the question of the deferments and about his negotiations concerning official trips of executives of the I. G. to Holland, which country at that time was already occupied by German troops, and finally concerning his endeavours to get some detailed information about the fate of members of the I. G. who, on the way to Belgium and Holland, were caught there by the German invasion. This proves that von der Heyde was occupied only with unimportant formalities and subordinated tasks and not with the question of the alleged factual collaboration of the I. G. in the field of counter-intelligence abroad. Moreover, it was Dr. v. Schnitzler who reported about this question and he mentioned his conversations with the Counter Intelligence Branch OKW (Major Bloch) at Bad Kissingen. Dr. v. Schnitzler was authorized, i. e. he had to take charge of all the tasks "by fully utilizing the Commercial Committee", as far as the commercial sector was concerned. Apart from this, the minutes of that meeting state that it was agreed upon (probably at Bad Kissingen) that requests (of the OKW Counter-Intelligence) which were to be submitted to the I. G. should always be brought to the attention of the Chiefs of the Sales Combinations only. Therewith von der Heyde was not only deprived of his functions as a kind of auxiliary liaison official, but he had no longer anything to do with questions concerning the employment of I. G. representatives for problems of Counter Intelligence abroad. The final decision of the Commercial Committee, declining the employment of confidential agents (Vertrauensleute) of the OKW-Counter Intelligence at the I. G., is of general importance. The concession of rendering occasional advice and the acceptance of special orders in individual cases was obviously intended only to make it possible to decline the main request of the Counter Intelligence Office; however, these individual cases were dealt with by Dr. v. Schnitzler and Herrn Mann personally so that they have nothing at all to do with the defendant von der Heyde.

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Actually the name of von der Heyde is not even mentioned under subsection III. 1. "Trips abroad" of the document II-1333 which the prosecution submitted in document book 49 as prosecution exhibit 919. It is interesting to note that these minutes of the post-conference No. 217 of 4 October 1940, prove that only at that time the appointment of Dr. Schneider as Counter-Intelligence Agent (Hauptwehrbeauftragter) and that of Dr. Dieckmann as his deputy for the technical and of Dr. von der Heyde for the commercial branches were made public, i.e. half a year after the actual appointments were made.

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It is typical for the role which Dr. von der Heyde played as a special adviser for agricultural problems, that he had to communicate to several executives of the I. G. an invitation of the Bulgarian Embassy to attend a reception there.

Details concerning the already carried out re-organization of the Counter Intelligence within the I. G. were not made until, the meeting of the Counter Intelligence Agents of the I. G. which took place on 29

November 1940, as proved by document NI-11075, submitted by the prosecution as exhibit 1905. According to this document, only the circular-letters of the OKW-Counter Intelligence III, were to be distributed to the local Counter Intelligence Agents in the future and, at most, references to special I. G. interests but no separate circular-letters. The local Counter Intelligence Agent was to receive directives only from the competent Counter Intelligence Office of the Wehrmacht, but not from the I. G. Central Office itself. The latter was to retain its full complete responsibility. The report of Dr. von der Heyde concerning the Counter Intelligence in the commercial

+ which was nothing more than that (and of 1940!) absolutely nothing was done in rendering that respect and that also the future task which had to be established yet, was intended only to be limited for purposes of the protection against espionage, i. e., to a protective activity in the narrowest sense of the word. The same is true for the enumeration of the most important danger elements which could offer to the enemy intelligence conclusions for valuable information.

This defensive activity, which in the military sector was directed by the OKW-Counter Intelligence III, was supposed to be augmented also by a Counter Intelligence Office of the Police, which within the structure of the state authority was entrusted to the Chief of the German Police at the Reich Ministry of the Interior and to the Gestapo subordinated to

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it. Therefore it was the state itself which placed the police part of the Counter Intelligence into the hands of the Office of the Gestapo. As proved by prosecution document VI-2383, exhibit 163, the appointment to the position of a Counter Intelligence Officer could be refused "only for apparent compelling reasons" (subsection IV. 1 of these regulations). In this connection fits also subsection III. 3, section II. "as far as the directives of the Gestapo (subsection 26) cannot be followed, the reasons have to be submitted in writing." Whoever was appointed as Counter Intelligence Agent

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had no other choice than to accept that order of the state authority and to make the best of it. This was not similar to joining the Gestapo organization and constituted also no voluntary collaboration, but was plainly the police part of the militarily necessary Counter Intelligence order which could not be declined. In his report of 29 February 1940, von der Heyde did nothing more than refer to the directives. (see page 12746). It is significant that overzealous investigations and inquiries of the Gestapo were rejected and von der Heyde was ordered to achieve general limitation of the local activity of the Gestapo.

The prosecution document VI- 14271, introduced as exhibit 1904 too, which represents a transcript concerning the meeting of 2 May 1941 at Frankfurt/Main, contains nothing else but a proposal for the future form of collaboration of the I. G. with the O. S.-Counter Intelligence I. A whole year after the constant pressure exerted by the O. S., which led to the correspondence between von der Heyde and von Schnitzler and the discussions between Major Bloch of the O. S. and Dr. von Schnitzler at Bad Kissingen, von der Heyde reports again about the future, because he is not able to produce any past and or present achievements which would comply with the requests of the O. S. It is true that Major Bloch expresses in an introduction the appreciation of Admiral Canaris for the valuable collaboration rendered by the I. G. up to then. However, these contributions were not made by the defendant von der Heyde, as proved by the prosecution exhibit 850 with which I will deal later on. For instance the prosecution quoted during the cross examination Seaneider (German transcript page 7564 English transcript page) from the report of 2 May 1941 of von der Heyde the following passage: "In future it will only be: No travel to foreign countries, no stay in foreign countries, no visits to foreign countries, no reports from foreign countries, no exchange of information or experiences with foreign

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countries without previous consideration whether Counter Intelligence I-1 and its field offices might be interested in these activities". This quotation was taken out verbatim by von der Heyde from the information sheet of the Counter Intelligence Office and he therewith repeated only the contents of these directives as a kind of guiding principles for the future. Even if the representative of the Counter Intelligence, Major

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Bloch in this meeting mentioned "that the dealing with the British Empire, the USA and the USSR has to be given first priority" this prosecution exhibit does not prove by far any connection with the waging of aggressive wars, because it was impossible to organize from May until June 1941, even if the executives of the I. G. would have desired to do it, an effective intelligence service for the preparation of an aggressive war against Russia. Even for the preparations of such an intelligence service against the USA it was too late and with the British Empire Germany was already at war. Moreover, the report of Dr. von der Heyde contains only directives which became absolutely necessary due to the persistent objections of the Counter Intelligence Offices. Therefore, the prosecution document as a whole becomes nothing more than a proof of the lack of collaboration.

Likewise, the post conference minutes No 254, of 7 July 1941, prosecution document XI 1334 and exhibit 1176 show von der Heyde in a wholly unimportant role in connection with the drawing up of an ordered list concerning personnel proposals for Russia, whereby von der Heyde merely was asked for his advice regarding uniforms. (German transcript page 12747, English transcript, page 12747).

The affidavit of Dr. Kurt Krueger of 15 July 1947, which was introduced by the prosecution under XI-No. 7862 as prosecution exhibit 259 in document book 10, gives a very valuable survey about the development of the "Mobilization Problem" and its treatment within the directorate of the I. G. Farben. It depicts quite clearly what importance was paid to the "mobilization problem" by the I. G. I would like to refer especially to the following sentence: "In consideration of the fact that we had no idea and could not get any information as to which friend-foe situation we would have to figure on in a mobilization-case, it seemed to us impossible or futile to take special precautions with regard to the preservation of deposits in foreign countries. In this sense we reported also to the Commercial Committee."

(Subsection 5 of the affidavit.)

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The Krueger Affidavit of 18 March 1947, HI-4928, prosecution exhibit 326 in document book 46, too, shows that von der Heyde played quite an unimportant role and that the connections between the O.G. and the I. G. could be traced back to a development with which von der Heyde had nothing at all to do. Furthermore the affidavit names several other executives of the I. G., who entertained a much closer connection with the Greater Intelligence Department of the O.G., than von der Heyde.

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These persons kept up their connection with the Counter Intelligence also without the knowledge of Dr. von der Heyde. Due to their greater insight into the transactions of the I. G. they were able to offer more information than the subordinated employee von der Heyde, who only occasionally served as a middleman for mutual requests. This becomes clear even from the documents dealt with up to now which shed some light on the connections between the I. G. and the Counter Intelligence Offices as seen from the point of view of the I. G.

2.) However, the role of von der Heyde becomes still clearer by scrutinizing prosecution document NI-7493, prosecution exhibit 863 in document book 47, which contains the weekly reports of the SA/Economic Armaments Office (SA Rue Amt). In all these weekly reports von der Heyde's name is only mentioned once i. e. in his capacity as expert adviser of the I. G. for matters of deferments in connection with the appointment of his superior Dr. Krueger to the SA. Dr. von der Heyde's name is not mentioned a second time and in no other connection in these weekly reports. On the other hand, for instance, a certain Dr. Farnow of the I. G. is mentioned no less than 14 times. Furthermore, Dr. Raithinger, Dr. Jahn, Dr. Legmann and finally, also Dr. Krueger are mentioned, the latter having been detailed to the beginning of the war to that particular SA-Department. All these executives of the I. G. did actual intelligence work, whereas Dr. von der Heyde performed only formal tasks, having to do with deferments, conveying of requests etc.

3.) From the first group of the prosecution documents remain still a few insignificant documents of less importance. The affidavit book of 21 August 1947, submitted in document book 52 under "I-No 10421" as prosecution exhibit 1064 is hardly worth mentioning because it contains only conjectures.

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The fact alone that Noeck, in connection with the dispatch of Dr. Gattinacci to Austria, which took place in May 1938, speaks about Ohlendorf "of the Reich Ministry for the Economy" - as is well known Ohlendorf did not come to the Reich Ministry for the Economy until fall of 1943 - proves that the entire affidavit is invented. *

* The cross examination shows that Noeck had to admit that all the assertions made in his affidavit were fictitious (German transcript page 2903-2910).

Prosecution document NI-15006, prosecution exhibit 2075 is a letter of the Pulver-Fabrik Skodawerke-Wetzlar AG., dated 4 January 1939, but is an obviously incorrectly addressed document, because it is directed to Dr. von der Heyde in the building of the I. G. Farben Industrie A.G., Vermittlungsstelle W (I. G. Military Liaison Office)*. As a matter of fact, the Vermittlungsstelle W. was competent for

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matters dealt with in that letter (code-symbols) but Dr. von der Heyde did not belong to this Vermittlungsstelle. This letter was, therefore, erroneously addressed to Dr. von der Heyde. The original of this document shows that Dr. von der Heyde merely initialed it to indicate that it passed through his hands, whereas the reports as to the carrying out of the transaction were made by the actually competent officials of the Vermittlungsstelle.

Finally, prosecution document VI-14661, prosecution exhibit 2015 depicts von der Heyde assisting in some work to which he was called as expert adviser, because he as Counter Intelligence Agent was also authorized to act on the outside with the formal competency. In this letter of Dr. Krueger and Dr. von der Heyde, dated 11 August 1939, addressed to the Military Economic Staff (Wehrwirtschaftsstab) concerning the nationality of Director Hoeffliger, two conversations are mentioned.

Firstly the conversation "of yesterday" of the person who signed on the right side of the letter, i. e. the conversation of Dr. von der Heyde with Lieut. Colonel Huenermann on 10 August 1939. At the conclusion of the letter conversation which took place a few days ago" is mentioned" that was the conversation of Dr. Krueger with Huenermann. The document contains no reference to any criminal activity of Dr. von der Heyde, the letter was written only in order to make sure that Hoeffliger on account of his Swiss nationality, in case of war should not be exposed to any restrictions of his personal liberty or other difficulties. Here, too, is a reference to the position of Dr. von der Heyde; Krueger participated in the decisive conversation, von der Heyde merely carried out the technical details of that affair.

B.) Limitation of the activity of Dr. von der Heyde with
regard to time:

Document II-7621, prosecution exhibit 250 in document book 9, contains those sections of the minutes of the meetings of the Commercial Committee (KA) from August 1937 until 5 December 1944 pertinent to the case. According to these reports, von der Heyde appeared for the first and only time before the war on 12 May 1939 in the Commercial Committee. (Von der Heyde was not a member of the KA.)

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In this 22nd session of the K., as in the 13 sessions in which he participated during the war, lastly on 16 February 1942, he was present only temporarily as long as the mobilization question was discussed. However, even during these first war years, von der HEYDE did not attend every session of the K. at which the "A-question" was discussed. For instance, he was not present at the 23rd session on 16 June 1939, at the 26th session on 20 October 1939, although he was there given the order to see to it that the purchasing departments and the sales associations in checking the requests for granting deferments proceeded smoothly, in addition, v.d. HEYDE was not present at the 33rd session of 28/29 June 1940 and at the 40th session of 18 March 1941, although at all these sessions the "A-questions" was being discussed. Moreover, having been drafted into the Wehrmacht on 5 September 1940, von der HEYDE withdrew from his civilian position (German Transcript 7584, English Transcript), so that after that he had no activity there other than training his successor and deputizing for him.

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Documents referring to Dr. von der HEYDE's relation to the
SS and the SD.

With regard to Dr. von der HEYDE's relation to the SS and the SD the Prosecution actually submitted only 2 documents, to wit: a part of von der HEYDE's personal files belonging together, which came about in connection with his marriage and is filed as NI-No. 6712, and secondly an affidavit by OHLENBURG of 17 November 1947, PI-12456, Proc. Exh. 1599 in Document Book 91.

Apparently for tactical reasons, the Prosecution divided the file NI-6712 connected with the marriage licence into four parts, viz. into document parts PI-6712 A, B, C, and D.

The document part NI-6712 A is an excerpt from the SS personnel files of v. d. HEYDE and was submitted as Exhibit 1597 in Proc. Book 91. The position "Fuehrer in the SD" is entered only in connection with the rank "Untersturmfuehrer" for the year 1938. In connection with the rank "Obersturmfuehrer" (beginning 10 September 1939) and the rank "Hauptsturmfuehrer" (beginning 30 January 1941) no official assignments whatever are entered, because von der HEYDE, as is stated in the OHLENBURG affidavit (Proc. Exh. 1599), "was no longer employed as confidential agent from 1939 on at the latest."

The document part NI-6712 B was submitted as Proc. Exhibit 1598 in Doc. Book 91 and is the so-called "R. and SD questionnaire of the SS Main Race and Settlement Office. There "SS-Untersturmfuehrer" is entered as rank and "SD Main Office" as unit, his activity is designated as "Honorary assistant of the SD Main Office". Thus no membership in the SD is entered but only "honorary assistant".

In conformity with Exh. 1597 this took place only during the period while von der HEYDE was Untersturmfuehrer, thus prior to the war.

The document part PI-6712 C was submitted as Rebuttal Document in Doc. Book 94 under the Exh. No. 2234. Being part of a complete document, this Proc. Exhibit 2234 is not a genuine Rebuttal Document since, being a part of a whole, it cannot state anything different from the remaining parts of the complete document.

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FI-6712, and what the prosecution had already stated with regard to parts a and b must now also apply to parts c and d. Therefore, parts c and d cannot refute what had been said with regard to parts a and b. They, therefore, are only rebuttal documents on the surface, as a matter of course they do not state anything more or anything less than parts a and b. FI-6712 c, Exhibit 2234, again mentions the SS Main Office as SS unit. Here von der HEYDE added the note honorary assistant in his own handwriting and even underlined it especially although there was no blank provided for such a note. On 6 May 1939 he thus explicitly pointed out that he was not a member of the SS, but only an "honorary assistant" which also could have been a person who did not belong to the SS at all. Standartenführer SIX of the SS Main Office, Central Department II, is designated as his superior. According to the OHLENBURG affidavit (Drs. Exh. 1599) the Main Department Economy was subordinated to this Central Department II (II, 23) and before the war, above all in 1938, occasionally had received information from von der HEYDE concerning the economic organization, without his having contacted SIX. SIX stated this during his interrogation by the Prosecution, but the Prosecution did not submit the interrogation transcript involved and also refused to hand it over to the defense.

The Prosecution inquired why von der HEYDE in these marriage papers stated the SS-Main Office and not the Reitersturm (Mounted-SS) in Mannheim to be his competent SS unit. This question can very easily be answered: At that time von der HEYDE resided in Berlin and on the basis of a legal regulation (HILDEBRANDT affidavit, von der HEYDE Document and Exhibit No. 5) he had to submit to the registrar's office the marriage licence issued by the SS Main Race and Settlement Office which was located in Berlin. It is clear that he staying in Berlin did not contact the Berlin SS Center via his unit in Mannheim but tried to find a shorter way via a Berlin office, in particular since he intended to marry soon. It was thus natural to use the SS-Main Office for passing on his marriage application by referring to his honorary assistant's position. As a matter of fact, the document part FI-6712 d, which was submitted as Rebuttal-Exhibit 2235, in Doc. Book 94, shows that the marriage licence was sent to von der HEYDE's private address and not to the SS-Main Office. This

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proves that there existed no longer any connection whatever with the SD-Sain Office at that time. The letter only filed a carbon copy because it had once been used for the application.

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But even using this more direct official channel the whole proceedings took a full five months until the marriage licence was received. If von der HEYDE had chosen the way Berlin-Mannheim-Berlin and back Berlin-Mannheim-Berlin, it would not only have meant using roundabout channels but also the intervention of several intermediate offices and surely a doubling of the time necessary for receiving the permit. How little v. der HEYDE maintained contact is seen from his signing the receipt of the marriage licence with "SS-Untersturmfuehrer" as late as on 18 October 1939 (in San.2235), although he had been promoted to Obersturmfuehrer already 10 September 1939 as Exhibit 1597 shows.

Incidentally, these promotions do not imply active SS service but only that the customary period until the next promotion had elapsed which was short in the case of the lieutenant ranks. This is best shown by the fact that von der HEYDE was promoted to Hauptsturmfuehrer as late as on 30 January 1941 although he at that time had already been with the Wehrmacht for five months and for this reason alone his membership with the SS was suspended by virtue of law.

The reason why von der HEYDE had not completely fallen into oblivion with the SS was merely that he had been appointed counter intelligence agent with I.G. Farben and had been registered as such with the Reich Main Security Office. The RSHA, however, was a blanket organization which in addition to the government Main Office of the Security Police also comprised the SD-Main Office, thus simultaneously an SS-Office.

The OHLENBURG affidavit NI-12456, Proc.Exhibit 1599 in Doc.Book 91 proves that von der HEYDE only served the SD as consultant in organizational questions of economy, thus in a field which neither constituted a criminal activity nor offered an insight into a criminal activity of the SD. With this evidence the Prosecution positively helped to prove that von der HEYDE had no knowledge of a criminal activity of the SD and could not have any. In addition, the Prosecution has proved with this affidavit that von der HEYDE gave up even this insignificant honorary consultant activity beginning 1939 at the latest, at any rate prior to the war, and, thus for this reason alone does not fall under the class of persons belonging to the SS and the SD declared to be criminal.

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With the SS von der HEYDE was only connected via the Mounted-SS (cf. examination of the witness, KLEBERER, Transcript 12771/72) which as an organization was excluded by the IMT from the criminality declaration of the SS. The Fehr affidavit, von der HEYDE Document and Exhibit No. 3, proves that between 1936 and 1939 von der HEYDE wore the crossed standards of the Mounted SS on his SS-Uniform in Berlin and not the SD lozenge, which was obligatory for SD-members. In addition, his promotion to Ober- and Hauptsturmführer was initiated by the SS personnel main office, not with SD-LEA, which likewise showed that von der HEYDE belonged to the Mounted-SS. (Von der HEYDE Exhibit 4, Affidavit JUETTNER.)

According to the excerpt from the judgment of Tribunal II vs. FOHL et al which is based on the IMT judgment and submitted as von der HEYDE Document and Exhibit 6, the Prosecution in addition would have to prove that von der HEYDE had knowledge of the criminal character of the organizations to which he belonged as asserted by the Prosecution. Since the Prosecution did not furnish this proof, von der HEYDE would have to be acquitted even if he had not belonged to the Mounted-SS but to the general SS or the SD as alleged by the Prosecution.

Von der HEYDE joined the Party in 1938 compulsorily after it had been ascertained that he, belonging to an NSDAP organization, was not yet a party member as proscribed. (Transcript von der HEYDE page 12677)

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III. Index of the documents submitted by the Prosecution (25) and the Defense (4) in the case of Dr. von der HEYLE stating the pages where they are dealt with in this Trial Brief.

Page	Doc.No.-NI	Exhibit	Subject
1	NI-7621	250	M-question, Reformatants
2	NI-7626	927	" " "
3	NI-3804	928	Counter-Intelli- " " "conco
3	NI-1450	934	" " "
4	NI-5950	929	" " "
4	NI-1447	930	" " "
4	NI-5951	931	" " "
5	NI-1333	919	" " "
6	NI-11075	1905	" " "
6	NI-2883	163	" " "
7	NI-14271	1904	" " "
8	NI-1334	1176	" " "
8	NI-7862	255	" " "
8	NI-4928	328	" " "
9	NI-7393	660	" " "
9	NI-10421	1064	" " "
9	NI-15006	2075	
10	NI-14661	2015	
10	NI-7621	250	" " "
11	NI-7621	250	" " "
12	NI-6712 A	1597	SS-Membership in the SS
12	NI-6712 B	1598	" " "
12	NI-6712 C	2234	" " "
13	NI-6712 D	2235	" " "
13	von der HEYLE	5	" " "
14	NI-12456	1599	" " "
15	von der HEYLE	3	" " "
15	von der HEYLE	4	" " "
15	von der HEYLE	6	" " "

CERTIFICATE OF TRANSLATION

Wm. A. E. Clark , B 397939,
William Zirkel, B 397828,
Earl Solender, 20091.

Hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of the document Frial Brief von der Heyde.

Leosine Bauer, Hossain
(Enrich)

Case 6
Defense

CLOSING - BRIEF

BY THE DEFENSE

OF THE DEFENDANT PROF. Dr. HEINRICH HOERLEIN

IN THE CASE

U S A

VS.

KRAUCH AND OTHERS

submitted
by the defense counsel
Dr. Dr. Otto NELTE

Aug



P A R T A
- - - - -

(COUNT 1 OF THE INDICTMENT: PLANNING AND PREPARATION
OF A WAR OF AGGRESSION)

The Prosecution has attempted to gain credence for Count 1 of the Indictment (Planning and preparation of a war of aggression) by means of a great mass of documents. For this Count of the Indictment there is no direct evidence that authorized representatives of Forben held discussions or reached agreements with Hitler, or with other persons who knew that Hitler was planning a war of aggression, which clearly revealed the intention on the part of Hitler, the Government and the Wehrmacht of planning to wage war without provocation against other nations. The thesis of the Prosecution tries to show that responsible representatives of Forben knew, on the basis of certain facts and circumstances, that Hitler was planning a war of aggression.

The Prosecution bases its thesis on circumstantial evidence. Accordingly, it must show that the facts and circumstances adduced and which it must prove permit no other conclusion than the one that the persons here accused had knowledge of Hitler's intentions to prosecute a war of aggression and that ^{they} knowingly participated in the realization of these intentions.

The arguments of the Prosecution are presented in a very generalized manner. They lack the differentiation as to time and facts which is necessary, and which is necessary above all for arguments based on circumstantial evidence. The strict rule of argument based on circumstantial evidence that only one conclusion is possible, to the exclusion of every other possibility, demands a wholly concrete presentation of an unseizable and convincing causal series.

The assertion, seemingly so convincing, that Hitler could not have carried on this war without Farben, that is, without the industrial capacity of Farben, is as true as it is devoid of significance for a judgment in criminal law. It applies to Farben, as it also applies to many other enterprises. Such a conclusion could be drawn with just as much justification with regard to the industrial enterprises of all nations which had a part in the war. There is no limitation for a conclusion of this kind in a total war. After all, it would apply in the case of a war of self-defense as much as in the case of a war of aggression.

Hence it follows that the deciding point is not the objective finding that this war could not have been waged without Farben's industrial potential, but the demonstration

by what concrete facts or circumstances and at what time

this or that defendant must have come to the clear realization, so far as he was humanly able to foresee and with due allowance made for individual circumstances,

that Hitler was planning a war of aggression

that his own actions helped to further the realization of this plan, and

that under this realization he took in measures which may be considered nothing less than the planning and preparation of a war of aggression.

As this point I quote the Supreme Court in the case of Sales v. USA, to which the Prosecution also refers in a number of instances.

(Trial-Brief Volume V)

This reads:

"All articles of commerce may be put to illegal ends. But all do not have inherently the same susceptibility to harmful and illegal use." (Trial-Brief V).

Another passage:

"This difference is important for two purposes. One is for making certain that the seller knows the buyer's intended illegal use.

The other is to show that by the sale he intends to further, promote and cooperate in it." (Page 5a)

Another passage:

"Furthermore, to establish the intent, the evidence of knowledge must be clear, not equivocal. IBID. This because charges of conspiracy are not to be made out by piling inference upon inference, thus fashioning what, in that case, was called a d'Agnet to draw in all substantive crimes." (Page 6)

In the opinion of the Supreme Court,

"suspicion, knowledge, acquiescence, carelessness, indifference,"
do not suffice; there must be

"informed and interested cooperation, stimulation, instigation." (Page 6a)

In order that these basic premises may be fulfilled it is not sufficient that certain preparations were

made for the event of war. Such preparations are made in all countries. Knowledge thereof and participation therein are not identical with preparations for a war of aggression. Consequently, it is necessary that there be concrete evidence/facts that permit no other conclusion than that a war of aggression was intended. Even if only a doubt exists, it is to be construed in the defendant's favor.

The IMT considered Hitler's discussions in his innermost circle - of 5 November 1937, 23 May 1939, 22 August 1939, and 23 November 1939 - as concrete evidence of knowledge on the part of the participants that Hitler intended to realize his aims by means of aggressive wars. Hitler revealed his plans in these discussions.

No shadow of evidence is offered that these defendants participated in such discussions or received knowledge thereof.

If even men like Schacht, who was appointed Reich Economic minister in August 1934 and Plenipotentiary General for the War Economy in May 1935, a post which he retained until November 1937, after which he was minister without portfolio until 1943, was acquitted of the charge of participation in the planning and preparation of a war of aggression, it would seem impossible that the men who sit here in the prisoner's dock should be pronounced guilty, in the absence of any concrete evidence of actual knowledge of Hitler's plans. This is particularly true in the case of Prof. HOERLEIN, whose sphere of activity excluded any contact with politically authoritative or informed persons.

Furthermore, the following were acquitted of the charge of participation in the planning and preparation of wars of aggression:

Speer, who - as the IMT Verdict says - was the "close personal confidant of Hitler" since 1934,

von Schirach in the Reich Cabinet since 1936,

Grand Admiral Doenitz, Commander of the submarine fleet since 1936,

Frick, Reich Minister of the Interior from 1933 - 1943, and

von Papen, Vice-chancellor in 1933, envoy to Vienna in 1934, Ambassador to Turkey in 1939.

On the basis of a vast array of material proving an industrial development over many years the Prosecution has maintained that this development allows the one and only conclusion that Hitler planned a war of aggression.

In the case at hand ^{this} is an erroneous conclusion. Had Germany been normally prepared in 1933, that is, if its army and armament industry had had the potential which would have enabled it to defend itself effectively if necessary, then any additional increase in strength would perhaps have justified suspicion. But the fact that in 1933 Germany, in respect of military and armament potential, was to be considered as defenseless against possible enemy nations surrounding it, and further, the failure of the attempts of the Stresemann and Brüning governments to bring about general disarmament in accordance with the Treaty of Versailles, permit no doubt of the good faith that an increase of armament was to serve the purpose of attaining a condition of parity, in other words, a normal condition of defense. When this was attained could not be determined by an outsider.

The material, which the Prosecution has presented for this Court is indeed voluminous, but it contains no concrete evidence as to the time when the normal state of effective defense was attained and what concrete circumstances provided the individual defendants with the unmistakable indication that Hitler had the intention of prosecuting a war of aggression without justification.

Furthermore, no detailed argument is needed to show that the preparations for the event of war, that is, including

a war of defense, differ in no respect from the preparations for a war of aggression. Likewise, no detailed argument is needed to show that a large part of the industrial development in the period from 1933 to 1939 could just as well have served peaceful uses as the purposes of a possible war. The Prosecution's attempted identification of the strivings for autocracy with the planning of aggressive war is from a logical viewpoint - and in view of Germany's notorious shortages in important fields of peace economy - of no value as evidence in this connection.

The facts and circumstances which, in the opinion of the Prosecution, are evidence of the knowledge that a war of aggression was being planned are either of a general or a specific character. In the case of the defendant ROESLGIN, as in the case of every other defendant, differentiation should be made between

those facts which he knew as director of the plant and of the Elberfeld research stations and
as one of the most important representatives of the pharmaceutical divisions of Farben, and

those facts which he knew as member of the Vorstand and of the Central Committee.

The examination of the evidence has clearly shown that the development of the Elberfeld works, as that of the pharmaceutical division of Farben all the way through, was a normal development for peaceful uses, and that in its production - since it was not included in the Four-Year Plan (page 6211 of the German version of the transcript; page 6153 of the English) - it was neither quantitatively nor qualitatively affected by the armament industry, to say nothing of being influenced by it. (Affidavit by Dr. Belz, Hoorlein Document No. 45, Exhibit 11).

Thus, the first requirement is lacking to assume a participation by Prof. HOERLEIN in the planning of a war of aggression.

The names of HOERLEIN and of the Elberfeld Plant were seldom mentioned in the Trial Brief and in the argument of the Prosecution. This is to be attributed to the fact that Prof. Hoerlein held no position in any business organizations; a circumstance, moreover, which is important for the question of whether and what possibilities existed for Prof. Hoerlein of receiving knowledge about the general development of rearmament.

The Prosecution presented a document, NI - 5934, Exhibit 475.

Appended to this document is a list of the alleged "specialist plenipotentiaries (Fachbeauftragter) of the Plenipotentiary General for Special Questions of Chemical Production". As the key date for this list 1 April 1943 is given, and Professor Hoerlein's name appears in the list after that of Dr. Boehringer under

15) Field of Pharma -, special field of pharmaceutical plants.

It is not evident whether Professor Hoerlein was intended here as a substitute for Dr. Boehringer. In any case, Professor Hoerlein never received an appointment or letter of appointment, and neither did he appear nor was asked

in the capacity of a specialist plenipotentiary for pharmaceutical plants.

In this connection reference should be made to the letter of 30 March 1943, from the Reich Economic Minister to Professor Dr. h.c. Brauch (document NI - 820, Exhibit 463).

In this letter the Reich Economic Minister orders as follows, in Part IV (page 4 of the original letter) under the title

"Specialist Plenipotentiaries (Fachbeauftragte) of the Plenipotentiary General for Chemistry" (GB Chem):

" In the field of organic and inorganic chemistry (including deliveries of auxiliary material to the above-mentioned sections), as well as in the field of soap, detergents, and yeast, no experts shall be appointed by the GB Chem. In these fields the GB Chem will rather resort to self-administration organizations of industry"

Hence it follows that the list (NI-5934, Exh. 475) did not become effective, and it is conceivable that Professor ROERLEIN heard nothing at all of this "appointment".

In his affidavit (Roerlein Document No. 148, Exhibit 117), Dr. Boehringer affirmed that he had never had a discussion of any kind with Professor ROERLEIN in connection with his position as specialist advisor for pharmaceutical plants.

The prosecution, moreover, characterized the participation in the so-called mobilization plans under Count 1 as indicating a participation in the preparation for a war of aggression. Economic mobilization plans, that is, the measures to be taken by every plant for the event of war, are today more than ever generally recognized as precautionary measures of protection, to be taken as a matter of course. In Germany these economic mobilization plans developed out of the strivings for autocracy and out of the state-planned type of economy. The development may be recognized from the nomenclature: "Erzeugungsplan, Belegungsplan, Produktionsplan, Mob-Plan (Production Plan, manufacturing plan, mobilization plan)". All these are nothing but different words for the same concept, as may be seen from Document VIII of the Prosecution. I refer in particular to Document NI - 4632, Exhibit 137, (page 16, Book VIII).

This is a letter of 8 September 1937 from the Vermittlungsstelle W (military liaison agency) to the different Farben plants, and to Professor Hoechelein, among others.

Since the production quotas (Belegungspläne) for the pharmaceutical industry in the years prior to the war amounted to 100% of the last annual production, subject to possible additional requirements by the Wehrmacht for particular products, Professor Hoechelein had always looked upon the production requested by the Reich Statistics Office as preliminary measures for the intended planned economy.

He was particularly confirmed in his opinion by the request for separate surveys for Elberfeld and Leverkusen, which would have meant a revelation of the cost prices. He continued to resist these measures until 1939, as the documents show.

The fact that in 1937 no data at all was on hand for a mobilization plan for pharmaceutical production, may be seen from the Prosecution Document NI - 8780, Exhibit 208, Book XIII, page 49.

Professor Hoechelein opposed all government intervention in industry. This may be seen from his attitude toward the requests of the Reich Statistics Office, an attitude which on 2 July 1937 led to the correspondence with Reich Economic Minister Dr. Schacht and with the Reich Economic Ministry (Collective Document-Hoechelein No. 46, Exhibit 18).

In the cross-examination the representative of the Prosecution sought to prove that Prof. Hoechelein had a special position in Farben's pharmaceutical division through the contention that mobilization plans for Hoechst, Elberfeld and Leverkusen allegedly could be set up only after consultation with Professor Hoechelein (pages 6410/11 of the German transcript; pages 635⁵⁵/4 of the English).

That is a mistake. And any evidence for it is lacking.

Except in Elberfeld, Professor Hoerlein had no powers of review, or even of decision, in any sector of production of Farben's pharmaceutical industry. On the other hand, through his protest against the production surveys of the Reich Statistical Office, he clearly expressed his attitude of opposition at the time.

It would seem to me to be relevant for the judgment accurately to appraise the point of view^{of} each individual defendant, to consider his particular field of work and interests; for every person views the world from his own milieu; the world of a scientist and research man is different from that of a businessman or of a technical industrialist. Professor Hoerlein, whose life work and whose whole life were taken up by science and research (Hoerlein, pages 6192 and 6195/6 of the German transcript; pages 6136 and 6139/40 of the English) was occupied so intensively and exclusively with his field of research that for this reason alone the assumption that he was accurately informed about the other branches of Farben, especially the projects of the separate plants, is warranted only to a limited degree.

In the argument of the Prosecution, however, Professor Hoerlein is charged in a separate point with participating in the planning of a war of aggression, namely, in research on and development of poison gas.

Point 42 (Count 1) of the Indictment reads, in part:

"Farben performed most of the research for the secret development of poison gas for war. The experiments were carried out by Farben employees under the direction of the defendants Hoerlein, Ambros and Ter Meer, in close cooperation with the Wehrmacht" . .

"The Geneva convention concerning the prohibition of gas warfare (Hoerlein document No. 65, exhibit 44) shows that neither research nor development of poison gases were a violation of international law; only the USE of poison gas during war was prohibited (Hoerlein document i.e. page 6280/81 German transcript, page 6224).

"Research and development of poison gas in themselves would, therefore, not be a violation of international law. Therefore the facts can have no importance unless the developments were made for the predetermined and recognised purpose of using the poison gas for aggressive warfare.

Insofar as Prof. HOERLEIN is mentioned in this connection, the poison gases concerned are those which were later called Tabun and Sarin. By bringing evidence on this point the charge of the prosecution has been refuted and by the evidence submitted it has been proved that neither Professor HOERLEIN nor the plant took part in neither the planned investigation and development of poison gases nor their production:

"The prosecution witness Dr. Schrader stated:

- 1.) "The substance from which Tabun and Sarin were later developed was not discovered at the request of Prof. Hoerlein or any other Forben office but in the course of research concerned with plant protection (P 2234 and p 2248/9 of German transcript page 2240 and page 2255/56 English transcript).
- 2.) Pursuant to legal regulations this substance had to be made known to the Army Ordnance Office. (page 2238, page 2244 and page 2249 of German transcript page 2255 of English transcript).
- 3.) "The development of the discovered substance later called Tabun and Sarin was in the hands of the Army Ordnance office (page 2241, page 2267 and page 2249, page 2255).
- 4.) There was "no collaboration" of the Elberfeld plant with the Army Ordnance Office. (page 2241 of German transcript, page 2248 English transcript).

5. Professor Hoerlein was not interested in the "development" of the substance and did not ask for it, on the contrary he even delayed it." (page 2244 German, page 2250/51 English pages 2245 and 2249 German transcript page 2255/56 English transcript).

The correctness of the statement of the witness Dr. Schröder was also confirmed by the affidavit of Prof. Dr. Wolfgang Wirth (doc. Hoerlein 32, exhibit 34) and Dr. Leopold von Sicherer (doc. Hoerlein No. 38 exh. 36).

Professor Wirth states summarily:

"Chemical plants such as the Farben for example had to report toxic material discovered during research to the Army Ordnance Office (HWA). Further developments, if the materials, were suitable, were taken care of by the Army Ordnance Office. Elberfeld did not collaborate with the Army Ordnance Office in connection with the Tabun. Professor Hoerlein refused a work order of the Army Ordnance Office; He was not interested in further developments of the poison gases which Elberfeld had reported and the HWA had developed into Tabun."

Dr. von Sicherer states, in summary:

"In 1935 Professor Hoerlein was asked to report highly Toxic materials discovered during research to the Army Ordnance Office in accordance with legal regulations. There was neither an order nor an agreement concerning work for the Army Ordnance Office. Prof. Hoerlein always tried to have the materials which he was forced to report released. Prof. Hoerlein did not like the interference of the Army Ordnance Office at all. Further investigation and development of the toxic materials were entirely the concern of the Wehrmacht, i.e. the department of the Army Ordnance Office dealing with these matters."

Defendant ter Meer confirmed in the dock the statement of prosecution witness Dr. Schröder (page 7242/43 German transcript page 7183/84 English transcript)

....

"that Elberfeld refused a proposed work order made by the Army Ordnance Office."

The same day prosecution witness Prof. Grose was heard. He corrected his affidavit NI 6927 exh 656 given to the prosecution, on important points when on the witness stand (page 2708-2713 German transcript page 2707-13). These corrections have been duly considered

in a new version presented to the Tribunal. (Hoerlein document No. 64 exh 33) This witness supplemented his statements (Statement 2713 - 2722 German transcript page 2714 - 2721 engl. transcript). On the whole he confirmed Dr. Schröder's statement particularly that the Elberfeld plant did not work on the "development" of poison gases. (page 2720 German transcript Engl. page 2719/trans.) He stated further that "Professor Hoerlein, confronted with the demand of the Army Ordnance Office to make and supervise such reports (toxic materials), had no chance not to report them". (page 2719 German trans., page 2718 Engl. trans.)

This completely clarifies the position concerning the cooperation of the Elberfeld plant in the creation of the poison gases Tabun and Sarin.

I do not want to omit, however, some of the points raised by the prosecution in this context:

a) the prosecution presented an affidavit by Dr. Wagner, NI-8960, exh. 618 in which the latter says (page 1 line 2):

"The production of the poison gases Sarin and Tabun came under the project headed by Professor Hoerlein and Dr. Schröder which was kept secret even from the Vermittlungsstelle W." (page 6288 German trans., page 6332 Engl. trans.)

In this connection Prof. Hoerlein stated, correctly it would seem: (page 6288 German trans., page 6232 Engl. trans.)

"I cannot understand how Dr. Wagner comes to speak of a "project" concerning Sarin and Tabun when he truthfully says, at the same time, that the Vermittlungsstelle W. was not given any information on this point."

Professor Hoerlein's refusal to a request of Dr. Wagner, to tell him, i.e. the Vermittlungsstelle W., of the "secret" discoveries" (NI - 8962 was natural because as Prof. Gross

(page 2719 German transcript, page 2719 English transcript) declared on oath:

"Prof. Hoerlein was pledged to the preservation of secrecy and threatened with punishment for treason."

This is revealed in the evidence submitted by the defense:

Document Hoerlein No. 58,	Exhibit 37,
" " " 59,	38,
" " " 60,	39,
" " " 61,	40,
" " " 62,	41,
" " " 63,	42,
" " " 22,	43,

b) Dr. Ambros corrected his remark in this respect in affidavit NI 6788 exh. 350, No. 14, on the witness stand as follows: (German transcript page 8109, last line page 8035 Engl. transcript).

Question: Herr Ambros, in your affidavit concerning poison gases, exh. 350, NI 6788 in document book per. 14, that is German page 92, you mention that the G e l b e n product later called T a b u n was developed by Dr. Schröder in Elberfeld. What did you mean to say when you used the word developed?

Reply: The expression is used wrongly here. Herr Schröder was a chemist who originally worked in Leverkusen and later in Elberfeld. His laboratory manager instructed him to open an entirely new type of insecticides. He discovered interesting combinations which had a strong insecticide effect. He developed these insecticides, that was his job. One material, one type, later became interesting for the other party. He patented these articles as one does with every chemical substance, and this afternoon we pointed to this patent which was taken out in 1936 as I recollect. Only through my studies which I pursued here, the OKH, the control office for patents, learnt about these interesting combinations, and from the multitude of various types, insecticide types, one type was chosen by the OKH and developed into Tabun. The word "developed" refers here to insecticide chemistry. The development into a poison gas was in the hands of the OKH.

c) The document presented by the prosecution, NI-4707
exh. 629 (File note concerning a study circle in the field of
poison gas chemistry) contains the remark:

"Told Dr. Boeckler that, in my opinion, it is necessary
to inform Prof. Hoerlein of the procedure".

(In the distribution list Hoerlein's name is not mentioned).

Professor Hoerlein stated in this connection:

"I do not remember anything about this affair and
I do not think I ever received such a communication.
I can state with certainty that I never took part
in a study circle in the field of poison gas chemistry
as it is called here".

Professor Hoerlein's non participation is also stated clearly
in prosecution document NI - 14 014 exh. 2319. We are dealing
here with a file note concerning a number of conferences dealing
with the collaboration of Farben with Herr Dr. Engelhardt
(-uer) in the field of poison gases.

Professor Hoerlein was not present, neither his name
nor that of the Elberfeld plant are mentioned.

This refutes the argument of the prosecution that Prof.
Hoerlein took part in the development of poison gas for an
aggressive war.

Part B

(Count 5 OF THE INDICTMENT : CONSPIRACY).

It remains to be investigated

whether Professor Hoerlein in his capacity as member of the Vorstand and the T&A knew that some of his Vorstand colleagues took part in the planning and preparation for aggressive warfare, and

whether, knowing these things, he actively supported the decision of the Vorstand by taking part himself.

Relevant participation, as defined by penal law, requires that during these conferences not only plans and projects shall have been discussed which might serve rearmament or preparations for a war BUT which were obviously and unambiguously designed for the planning and preparation of a war of aggression.

The structure and organization of Farben is dealt with in separate speeches to which I also refer in the case of Hoerlein. I can, therefore, limit myself to essentials and incidents particularly important for the Hoerlein case.

Farben is not ^{an} organically developed company but a combine of independent companies and plants. It is an Interessengemeinschaft (syndicate) in the form of an "Aktiengesellschaft" (stock corporation). The hall mark of such an "Aktiengesellschaft" is that the individual companies retain their independence.

The central management of such an "Interessengemeinschaft" includes problems of general importance.

The members of the Vorstand are representatives of their plants or of certain plant branches; they represent the interests of their plants and their plant branches.

The larger such an Interessengemeinschaft the stronger the tendencies towards independence which can be overcome only by strict centralisation or organic decentralisation. Farben chose the method of organic decentralisation; it left the individual plants as much independence as possible. The central Management had the supervision of their executive committees (Gremien) as laid down in the statutes.

No single member of these executive committees but only the committees, as such had the right of supervision or decision whenever this seemed necessary in the interest of the whole.

The result of this organization was that the central executive committees were not informed about the details of management within the individual plants; they were merely informed about developments by means of overall reports and summarized figures.

Considering that these Vorstand members from all parts of Germany met, on an average, 8 times a year for 4-5 hours each, in meetings of all the Vorstands it is obvious, according to general experience, that only general and particularly important topics could be discussed.

With regard to the organization of Farben, the distribution of work and responsibility I refer to the affidavit by Dr. ter Meer, NI-15187 exhibit 334, number 7 and the Hoerlein affidavit, document book No.43, exhibit 5.

As Farben grew the independence of the individual plants, of course, increased, and the chances of being informed about the details of the individual plants decreased.

This means, for the present trial, that an assumption which might apply to a normal Aktiengesellschaft - limited both objectively and materially - where the knowledge of details of the operation of the business may be taken for granted, is unfounded. Even apart from the fact that even ^{for} normal stock corporation there can be no assumption, legally, in a criminal proceedings, but the individual knowledge would have to be proved, the abnormal size and structure of Farben makes it impossible even to assume knowledge of facts which affected another branch of Farben. It must remain the duty of the prosecution here to prove the individual guilt of the individual defendants.

The total responsibility of the Vorstand under a stock law and used here by the prosecution is a responsibility under stock, i.e. civil law. (Document v. Kalendar No. 39, exh. 280).

That responsibility is towards the general meeting i.e. the various stock holders; once discharge has been granted it cannot be used by an individual shareholder, much less a third party.

Responsibility under penal law would make it necessary to assume that there was proof that the entire administration or its individual members had committed a crime which would have to have the characteristics of criminal guilt and causality. (Document v. Kalendar No. 40 exhibit No. 281).

It is important to recognize the true picture of the Interessengemeinschaft, called IG Farben. The picture painted by the prosecution is far removed from all reality in construction. The natural exchange of experiences, the natural coordination of various plants of similar character, the threads from the various plants joining ⁱⁿ the Vorstand according to law and statutes, are being used as a foundation on which to build a legal structure of a conspiracy, i.e. of a group which combined for the purpose of planning and preparing a war of aggression. The decades old technical and commercial organization of an internationally recognized enterprise is called criminal as from a certain date. A concrete plot for the purpose of changing the former peaceful aims of the organization is not charged; no more concrete agreement between representatives of Farben and the government, Wehrmacht, or Party, which might prove collaboration for the purpose of preparing a war of aggression.

The prosecution chooses a few links from the chain of world historic events with which it connects together the defendants or rather their official ^{or} commercial position.

What the prosecution, what the court and what we Germans know today, cannot be put on trial, but only what the defendants knew when they did or did not do the actions for which they are now indicted.

General Taylor quite rightly recognized that:
(page 92 German transcript, page 94 English transcript)

"The ability to be wise after the event is more common among men than true foresight."

You, your Honors, before you came to Germany lived in a different milieu and in a sphere which was entirely cut off from the sphere geographically called Germany. You were influenced by your press, your radio and other means and methods. Here you were presented with events with all their horror and ramifications which took place in Germany and the occupied countries after 1933.

These events were historically related, in a biased manner. The history is supposed to appear to you as a chain of events which is not only supposed to be a chronicle but a chronicle based on a plan. There is a possible source of error in trying to determine the truth by means of the retrospective method of observation. It is what is called in historical philosophy "retroactive rationalization", i.e. the subsequent invention of motives for a logical explanation of thoughts and events which in reality were based on no such motives.

Collective guilt is contrary to the first principle of penal law: personal responsibility. Collective guilt is based on collective charge. Collective charges are usually a sign of a lack of evidence for individual guilt.

The aim and idea of this procedure is to cover the lack of individual evidence which would inevitably lead to exoneration of the individual defendant by a so-called assumption of guilt in order to place the defendant in a position in which he will have to clear himself.

It has never become clearer than at the present time that it is virtually impossible for an individual who belongs to a collective group to establish the proof required for his exoneration - which, indeed, must consist of proof that he does not belong to the group.

The conspiracy was - so it appears to me - the constructively conceived weapon of the police and the prosecuting authorities against organized gangsterdom.

Whatever one may think of the legal significance of this interpretation, it may only be applied where the extent of the collective group cannot be seen. In the IMT judgment the question of the criminal group or organization was thoroughly treated. If the Prosecution here did not move that the Vorstand of Farbon be declared a criminal group, nevertheless, Counts 1 and 5 of the Indictment are based on the express allegation that it was a criminal group. The Indictment says, under Count 1, subsection 1:

"All of the defendants . . . participated . . . in the planning. . . . All of the defendants committed these Crimes in that . . . they . . . were members of organizations or groups, including Farbon"

Under Count 5 of the Indictment, subsection 147, reference is made to all the former statements under I, II, and III.

The IMT Judgment says, with regard to the "organization" of the Reich Government (page 16531 of the German transcript):
(page 104 of the official edition of the IMT Judgment)

"The Tribunal is of the opinion that no declaration of criminality should be made with respect to the Reich Cabinet (Reichsregierung) for two reasons:

not
1. because it is shown that after 1937 it ever really acted as a group or organization;

2. because the group of persons here charged is so small that members could be conveniently tried in proper cases without resort to a declaration that the Cabinet (Regierung) of which they were members was criminal."

If any group is to be made responsible then it should be the Reich Cabinet (Reichsregierung) which, as the group constitutionally called upon to represent the German Reich, should be made responsible as a whole for the planning of aggressive wars and whose activity should be judged as a conspiracy. The IMT did not so find.

Hence, it is obvious that the IMT considered the assertion, that an organization is criminal to be relevant only if it concerns an organization having a "large membership". If in the case of a number of persons the possibility of individual guilt exists, there should be no collective prima facie presumption of guilt. In such cases there must be no assumption of guilt on the basis of membership in a group of persons, but the primary principle of all criminal proceedings must prevail, the question of whether or not the individual has fulfilled, subjectively and objectively, the conditions of the punishable act. For this question it is relevant - according to the IMT Judgment - whether individuals knew of Hitler's intentions - the planning of wars of aggression - and assured him of their cooperation in this intention. (Page 16465 of the German transcript). Pages 55 and 56 of the official edition of the IMT Judgment. The minutes of the meetings of the Vorstand and Committees which the Prosecution produced in evidence contain no evidence of jointly - planned support of Hitler's intended aggression. To the assertion of the Prosecution in the IMT Trial that every significant participation in the affairs of the Government is evidence for the participation in a conspiracy, the IMT says:

Closing brief Hoerlein

(Page 16463 of the German transcript) Pages 54 and 55 of the official edition of the IMT Judgment. (Translator's note: the underlines here given are not contained in the official edition).

"Conspiracy is not defined in the Charter. But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action.

.....
The Tribunal must examine whether a concrete plan to wage war existed, and determine the participants in that concrete plan.... But the evidence establishes with certainty the existence of many separate plans rather than a single conspiracy embracing them all."

In the present Case the Prosecution has produced not a single piece of evidence to show that any of the accused members of the Vorstand knew of or participated in a concrete plan of Hitler to wage war.

HOERLEIN's sworn statement regarding this Count is therefore credible and convincing. (Page 5223 of the German transcript; page 5166 of the English transcript).

In his defense Professor HOERLEIN pointed out that his attitude, prior to the war, is positive proof that he did not have war in mind.

1. The minutes of the Main Pharmaceutical Conference of 19 July 1939 (Hoerlein Document No. 47, Exh. 21) read, in part:

"A serious examination of the whole situation resulted in the conclusion that we shall make no progress as long as manufacture does not actually take place in France, that is, through a French company of our own. It has, therefore, first been decided to undertake the production of Padutin, Campolam, Campoferran, Evipan-Natrium and possibly Locarnol in France."

"With reference to Grebel's statements on the situation in France and Spain (see Item II/2) Lutter informs us that Rigal, Paris, were commissioned to look for suitable manufacturing premises in the neighborhood of Paris, to be rented for the time being. A new French manufacturing company will be formed for carrying our production."

Closing brief HOERLEIN

There can be no more convincing proof that HOERLEIN and the pharmaceutical division of Farben had no knowledge that Hitler was planning a war of aggression than the fact that 6 weeks before the war a resolution was adopted which would have been unreasonable had the state of affairs been known.

2. This resolution also shows that the speeches were sincerely meant which were made on the occasion of the visit at the same time of representatives of the English pharmaceutical world and which gave expression to the state of mutual dependence and to the hope for peaceful collaboration, and that it was incompatible with the knowledge of any danger of war, to say nothing of participation in the planning of wars of aggression. The letter of thanks, submitted as a Hoerlein Document (Hoerlein Document No.50, Exhibit 24), is a testimonial to the spirit of friendly agreement and international recognition. (See also Document Hoerlein, No.49, Exhibit 23).

3. The minutes of the Main Pharmaceutical Conference of 11 Oct 1940 are further evidence of how little Professor HOERLEIN and the pharmaceutical division of Farben knew of the intentions of Hitler to wage war against the Soviet Union. In my opinion the trip to Moscow, projected for the spring of 1941, is a symptomatic indication of HOERLEIN's ignorance on the whole of political and military matters.

Professor HOERLEIN's answer (page 6223 of the German transcript, paragraph 3; pages 6165 and 63 of the English transcript) to the question (page 6223 of the German transcript; page 6165 of the English transcript) is of determining significance for the attitude of HOERLEIN and the pharmaceutical division in general to the question of war:

"...would the pharmaceutical branch of Farben have had any advantage in a war?"

Closing brief HERRLEIN

" The contrary is true. In case of a war, we would have lost all of our export, which would only be temporarily increased by war -conditioned over -production. As a result of the great amount of our international business and of the long connections with foreign countries and foreign pharmaceutical industries, our attitude was absolutely international."

It is thereby proved that the Prosecution has not proved that

Professor HERRLEIN :

1. either participated personally in any way in the planning or preparation of wars of aggression, or
2. participated in a conspiracy having as its aim participation in the planning or preparation of wars of aggression.

P E R T C

(Count 2 of the Indictment: Plunder and Spoliation)

Under this Count of the Indictment the cases are considered which the Prosecution refers to as "plunder through contracts". The contracts are regarded as a method of cloaking, agreements, allegedly concluded through the use of duress, which served to give the appearance of legality. This accusation gains weight by the fact that these agreements were concluded after the defeat subject under the conditions of occupation. It would be wrong to deny that such conditions restrict the personal freedom of the individual. How far this restriction of freedom can go, we know from experience. There are occupying powers that do away entirely with freedom of business transactions through investigations, confiscation of plants and of patents.

True, it cannot be maintained that the methods used by Farben were uninfluenced by the circumstance of the military victory. However, according to experience gained in the meantime, it must also be said that the circumstance of military victory did not so influence the methods of negotiation by the Farben representatives with the representatives of the chemical and pharmaceutical industry of France that one would be justified in speaking of "spoliation" under the guise of a contract.

This applies particularly to the negotiations which Professor Heerlein conducted with the French business partners: before the conclusion and during the negotiation of the so-called Contract No. 2 of Farben with Rhone-Poulenc (Doc. NI-8611, Exh. 1275).

This is the only contract which Professor Hoerlein signed together with Mann his colleague of the Vorstand. Even in its form - a simple confirmation by letter - this contract shows that there are absolutely no anomalies in the agreement thereby reached: it was a gentlemen's agreement in its origin and it remained so whilst being carried into effect. From a material standpoint it was a good business deal for Rhone-Poulenc.

There is no document and no evidence which the Prosecution has produced in this connection which contains anything to discredit Professor Hoerlein. This lack of any incriminating affidavits by any of the French business partners with regard to Professor Hoerlein seems to me a cogent proof to this effect, namely, that none of the persons with whom Professor Hoerlein had dealings was willing or in a position to give any testimony that would be considered incriminating within the meaning of the Prosecution's accusations.

On the contrary, Dr. Mietzsch testified in his affidavit (Hoerlein Document No. 69, Exh. 48):

"All the negotiations known to me between the firm of Rhone-Poulenc and the I.G. in this period were carried on by both parties in an unusually friendly manner, such as is seldom achieved by two companies in international collaboration. The basis for this was the agreement No. 2 which was concluded under the decisive influence of Prof. Hoerlein by which both parties to the agreement - Rhone-Poulenc and I.G. - were accorded exactly the same rights and the same obligations. The conclusion of this agreement, the basic keynote of which accords with the mental attitude of Prof. Hoerlein, was to lead to a continuation and permanent intensification of the private economic relations existing before the war. I declare openly and without reservation that I have never known of any actions or remarks by Prof. Hoerlein, which - even by the most critical standard - can be regarded as putting pressure on the firm Rhone-Poulenc, after the occupation of France by German troops in 1940. Furthermore, I declare that Prof. Hoerlein, in addition to this, energetically upheld the interests of the firm Rhone-Poulenc towards third parties."

The correctness of this statement is confirmed by the correspondence which Herr Mann submitted in his defense.

I cite Mann documents:

No. 588,	Exhibit 280
" 560,	" 281
" 603,	" 288
" 680,	" 289
" 685,	" 291
" 678,	" 292.

These documents reveal the friendliness of the business manner and of the contacts and the loyalty of the German party to the agreement; they also show that Contract No. 2 had favorable results for Rhone-Poulenc, as was expressly confirmed, moreover, by the witness Dr. Grobel (page 12074 of the German transcript; page 11858 of the English transcript):

" The economic significance of Agreement 2 was considered by us to be a very great favor for the firm Rhone-Poulenc, since we made available to them our entire scientific know-how and our technical developments and all the scientific work which we had. This was an event which hardly found its equal in our world business".

The defense of the defendant Mann convincingly demonstrated this in detail in the examination of evidence. Here only a few circumstances should be considered which affect Prof. Hoerlein personally.

As early as during the discussions regarding Contract 2 the representatives of Rhone-Poulenc revealed a particular interest in Dolantin, a synthetic morphine substitute. The importance of this product, which was discovered and manufactured in Hoechst, may be seen from Lautenschlaeger Document No. 52, Exhibit 55, an affidavit by Professor Dr. Schumann. Dolantin was a preparation which had already been introduced, and this it was not subject to Contract No. 2, which provided only for future scientific collaboration.

Nevertheless, the wish of Rhone-Poulenc was immediately granted, as may be seen from Document Mann No.560, Exhibit 281. This is the letter of 4 April 1941 to Herr Grillet, in which Professor HOERLEIN offered to introduce the gentlemen from Paris personally at Hoochet, and this was done upon their next visit. Through the information given them on this occasion the Firm of Rhone-Poulenc was enabled to start manufacture in May 1942, as shown in the letter of 30 June 1942 from Herr Boto Professor HOERLEIN. This is Document Mann No.678, Exh.292.

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The last paragraph of the above-mentioned letter of 1 May 1942 to Herr Bo further shows that the Firm of Rhone-Poulenc was offered the manufacture of Tibatin, the best existing injection preparation for streptococcus infections.

The other documents show that Forben assured the Firm of Rhone-Poulenc of help in every conceivable way, especially in patent matters.

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about Hitler is conclusive evidence not only of the mutual relation of confidence, but also of the characteristic attitude of Prof. Heerlein.

This attitude, which involved danger to his life, would seem to preclude the assumption that Professor Heerlein had ever adopted anything but a loyal attitude towards the French business partners.

This must be taken into account if the testimony of Prof. Heerlein in the direct examination (pages 6297-6300 of the German transcript, pages 6242-6245 of the English transcript) and in the cross-examination (pages 6417-6427 of the German transcript, pages 6358-63 of the English transcript) is to be correctly evaluated. The Prosecution, which can bring no charges against Professor Heerlein of participation in negotiations with Rhone-Poulenc, tries to construct a criminal charge on the basis of knowledge of reports concerning these negotiations. Prof. Heerlein has not denied that he acquired general knowledge concerning these negotiations (page 6298 of the German transcript, page 6243 of the English transcript); he did deny, however, that an improper influence resulted from these reports.

In this connection the question is relevant of how one should judge the negotiations concerning compensation for the preparations, which were to be paid for by Rhone-Poulenc, since this firm had imitated Farbon products for many years without paying any corresponding license fees.

Prof. Heerlein stated on the witness stand (pages 6295-6297 of the German transcript, pages 6240-42 of the English transcript) that the regulations of patent law in France regarding Germany's intangible wealth in the therapeutical sphere did not conform to general legal concepts and the regulations of patent law in most civilized nations. He had already thoroughly substantiated this in an article in 1935

(Hoerlein Document No. 68, Exh. 45), and in his defense he mentioned the point of view taken by Dr. Courneau, the French professor (Hoerlein Document No. 66, Exh. 46), who said:

"Generally speaking, it does not matter whether the process is patented or not. If we consider only French consumption and that of other countries in which German industry was not able to take out any patents, then, on the basis of our laws, we have the chance of making use of the production processes which have been invented by Germans, and it would be ridiculous on our part, if we did not take advantage of this legal situation".

From the correspondence between Hoerlein and Rhone-Poulenc which has been submitted (Hoerlein Document No. 67, 1-5, Exh. 47) it may be seen that, later, the Firm of Rhone-Poulenc recognized on principle the point of view held by Professor Hoerlein.

Professor Hoerlein testified that he had regarded the difficulties which Herr Mann had in the negotiations with Rhone-Poulenc as proof

"that both partners were in free negotiations - each party endeavoring to represent his interests as well as possible".

(page 6298 of the German transcript, page 6343 of the English transcript).

Accordingly, it cannot be regarded as proved that Prof. Hoerlein had acquired knowledge of any illegal pressure on Rhone-Poulenc in Herben's negotiations with that firm.

PART D

(COUNT 3 OF THE INDICTMENT: SLAVERY AND MASS MURDER)

I

Section 128 of the indictment.

Regarding the procurement, employment, treatment and feeding of foreign workers, no specific charge has been preferred and no evidence has been offered with reference to the ELBERGEL works under Prof. Hoerlein's management. Document NI-7513 - an affidavit Moyeuz and the only one relevant to this Section of the indictment - is indeed contained in Prosecution Log, Book No. 70 but has not been submitted.

In Section 128 of the indictment the charge is preferred in respect of all Farben plants and works that

"... sub-human standards of living were the established order. Inadequate food rations overcrowded and filthy sleeping quarters, excessive hours of hard and physical labor, continued beatings and other cruel disciplinary measures, brought about a high percentage of illness and disease among the inmates. In cases of disease, little or no medical care was furnished, as a result of which many slave laborers died."

This sweeping assertion demands clarification before the court in order to restore the assailed honor of ELBERGEL works, the more so in view of publication by the press of parts of above-mentioned Document NI-7513 which has not been submitted.

The conditions actually prevailing in the works are shown by the following statements which have been submitted and accepted as evidence.

Hoerlein Document No.88, Exh.87 - Affidavit dated 28 Oct 1947 by Josef EICHELER, M.D.

Dr.EICHELER was in charge of health matters and medical treatment of foreign labor, as plant physician of I.G.Farben Werke at ELBERFELD. He declares that in those functions he was guided exclusively by his medical conscience.

"At no time did the plant management exert any pressure on me, nor did I received any instructions from them, to treat foreign workers differently from the sick German workers."

HOERLEIN Doc. No.103, Exh.88 - Affidavit dated 28 January 1948 by Werner GRAB, M.D.

as nutrition physiologist, based on written data which are almost complete on the feeding of foreign labor at ELBERFELD Farben plant.

In summing up Dr.GRAB comes to the conclusion that in most instances the food of foreign labor in the ELBERFELD plant was equivalent to that of the German population and that the food rations of foreign workers - which were correspondingly increased for men doing heavy and very heavy work - were higher than the rations officially prescribed.

HOERLEIN Doc.No.105, Exh.89 - Affidavit dated 22 Jan 1948 by August ARMENAT

who issued the food and who was responsible for the care and control of Western workers.

The Frenchmen received the same food as the plant's German workers. When fruit, eggs and sweets were distributed, the French workers were on absolutely the same level as the German workers. Cake ration cards still in use during the war, were delivered to the French workers without any restrictions. Ten babies born to young Polish women were well cared for; they were given the appropriate food, had their own white cots and were attended to by an elderly German woman. The children were medically examined every month.

HOERLEIN Doc.No.104, Exh.90. - Affidavit dated 22 January 1948 by Heinrich BLASZYK,

an official of "BAYER" works security police. One of his jobs was the supervision of the foreign labor camps of the Elberfeld - plant - Frenchmen, Belgians, Dutchmen and Danes, on the one hand, Danes, Dutchmen, Belgians, and one Frenchwoman, lived in private / without special enclosures. On Sundays workers could attend divine service, pay visits to other camps and receive visitors. They

were permitted to go to cinemas in town. Holydays were appropriately celebrated.

Hoerlein Doc. No. 106, Exh. 91 - Affidavit dated 22 January 1948 by Frau Ella Schwarz, cook at Elberfeld plant kitchen.

She confirms that the uncooked food handed to her was fresh, unspoilt, appetizing and clean. Foreign workers had their meals together with the German workers. Meals consisted mostly of several courses: Soup, meat, vegetables, potatoes and fairly plentiful dessert. Frequently special diets were prepared for one or other of the foreign workers, by order of the plant physician.

Hoerlein Doc. No. 107, Exh. 92. - Affidavit dated 22 January 1948 by Frau Klara Blender, head of the plant kitchen for Polish and Russian workers.

The food dispensed was tasty, and complaints occurred only very rarely. These were not directed against the manner of preparing the food but against the selection of the menu. Due to prevailing conditions, it was frequently necessary to serve cabbage which did not always please the workers.

These statements prove that foreign workers in the Elberfeld plant received, in every respect humane treatment, food and medical care. They are further proof of Prof. Hoerlein's attitude concerning the treatment of foreign workers in general. When he learned, in his capacity as member of the Veretand, of the employment of foreign labor in other plants, he was - one must believe him - entitled to the conviction that they were treated in exactly the same way as he himself treated those employed by him. (Page 6252/3 German Transcript; page 6206 Engl. Trans.). One can only go by what oneself does or would do in similar circumstances.

II.

Section 131 of the indictment (Degesch facts).

Nowadays mention of Zyklon B automatically reminds one of the gassing in Birkenau of hundreds of thousands. This fact, probably the most horrifying event in the history of concentration camps, has been given publicity throughout the world since 1945, through detailed reports from Nuernberg and through propaganda, with the tendency to arouse the impression that knowledge of the hell of Birkenau was common German property.

The Prosecution attempts, on the basis of the propagandistic thesis of a general knowledge of Auschwitz' Birkenau, to credit the present defendants with the special knowledge that Zyklon B had been the means to the execution of the extermination scheme and that this annihilating gas had been supplied by Degesch via the firm of Tesch & Stabenow (Tosta).

The conclusion by the Prosecution that Farben's participation in Degesch was identical with knowledge of the supply to Auschwitz of Zyklon B for the purpose of exterminating KZ-inmates, is an unfounded assumption based on circumstantial evidence which lacks both causality and compelling logic.

This ignores the fact that Zyklon B has been for decades, and still is, an internationally applied and highly appreciated disinfectant, indispensable for pest control and thus for the maintenance of the health of millions of people. This conception of its utilization and general utility was, and would be, the deciding factor for everyone who had to deal with it or to evaluate it or to use it, until such time as he became aware of its misuse.

1. There is no substantiated charge whatsoever connecting the Zilberfeld plant with ZYKLON B. ZILBERFELD supplied LEGESCH with neither prussic acid nor intermediate products for Zyklon B. Any assertion of any other business connection between the Zilberfeld plant and Legesch is also lacking. It is also to be considered proved that Legesch was the "managing partner" and that the management of Legesch attached great importance to its independence. (Legesch Doc. Book I, Doc. 47, Exh. 13; and Doc. Book II, Doc. 27, Exh. 33. Compare evidence of Schlosser: German transcript pp. 10663/65, Engl. trans. pp. 10525/27. Dr. Goldschmidt: German trans. page 13077, Engl. trans. page 12874).

2. The only connection with Legesch existed in the fact that in 1937 Prof. H o e r l e i n became a member of the administrative committee of Legesch (Doc. NI-12073, Exh. 1765) and that from that time on he received the annual and general reports.

3. In order to deduce logically the existence of a criminally relevant connection to the criminal use of the Zyklon B gas supplied by Tests or Legesch, the following facts would have to be asserted and proved:

- a) Knowledge of the supply to Auschwitz: KL by Tests or Legesch of Zyklon B;
- b) knowledge of the alleged use, there, of this Zyklon B for gassings; and
- c) irresponsible neglect to prevent further deliveries.

Now even the first of these three facts has been proved.

4. Since 1937, Prof. H o e r l e i n has not attended a single meeting of the administrative committee or of the stockholders of Legesch. (Hoerlein trans., German page 6239, English page 6238).

5. The prosecution documents make no mention of defendant Hoerlein's name:

Neither in any correspondence, nor in any report, memorandum, or the like, He is also not referred to in other records.

The Prosecution's trial brief and evidence do not contain any facts which prove Hoerlein's connection, or his knowledge of, the internal business affairs of Legesch.

Legesch's annual reports and the general information submitted by the Prosecution (Exh. Book 82, NI-12206, Exh. 1767; NI-9098, Exh. 1768; NI-63 61, Exh. 1771; NI-12004, Exh. 1772 - to quote a few instances) do not contain any clue to the supply to Auschwitz of Zyklon B, far less to the purpose of gassing human beings. From the evidence regarding the turnover figures of Zyklon B, no proof can be adduced as to knowledge of the use of Zyklon B for gassings of human beings.

No evidence has been offered to prove that Prof. Hoerlein learned by other means of the gassings with Zyklon B of people at Auschwitz/Birkenau.

In the testimonies of the witness, Hoerlein's name does not appear. Dr. Peters, manager of Legesch and thus its legal and commercial representative, declared on the witness-stand that he did not know Prof. Hoerlein. (German transac. page 10669, Engl. trans. page 10530). The testimony of this witness is confirmed by his statement submitted as appendix to affidavit Minskoff (NI-15071, Exh. 2123). According to subsection 2 of Minskoff's affidavit, Dr. Peters was to "submit a statement of his own concerning the points of contact between Legesch and Farben". This statement on the points of contact makes no mention of Hoerlein's name, at all.

During the cross-examination by the Prosecution of Herr Mann (Exh. 2099/2109) and of the witness Schloesser (German transcript page 10661/65, Engl. trans. page 10524/27) numerous documents were submitted in respect of Legesch's "points of contact" with Farben. None of these documents contains the name of, or a reference to, Prof. Hoerlein.

Hoerlein's affidavit regarding the Degesch affair is therefore acceptable and convincing. (German trans. pp. 6290/93; Engl. trans. pp./6234/38).

It should be noted when weighing the evidence-in-whole that by a ruling of the Tribunal von Schnitzler's affidavit (NI-5197, Exh. 18) and equally Prof. Lautenschlaeger's affidavit (NI-9811, Exh. 1520) are not admissible as evidence insofar as they are liable to incriminate other defendants.

No proof has been offered by the Prosecution of reports at meetings of the technical committee or Vorstand on the Auschwitz gassings. The generalization preferred by the Prosecution is without foundation. (Subsection 86 Trial Brief III). Prof. Hoerlein has never been to Auschwitz and had no knowledge of the Auschwitz/Birkenau gassings.

The excerpts from judgments (subsect. 89/92 Trial Brief III) quoted by the Prosecution in this connection have no bearing whatever on Prof. Hoerlein since the first condition is lacking: a sphere of activity, such as was assumed in respect of Brandt in Case I and in respect of Munmenthey in Case IV; the same holds good in respect of the President of the Reichsbank and Reich Minister of Economics, Funk, in case of IMT.

The Supreme Court Judgement (Direct Sales Co. vs. United States 319 US 703) referred to by the Prosecution in subsect-93 of Trial Brief III and already mentioned in Parts A and B, also fails to support the Prosecution's contention. The opposite seems to be the case.

It is said there:

"All articles of commerce may be put to illegal ends. But all do not have inherently the same susceptibility to harmful and illegal use." (Page 5 Trial Brief V);

and further-on:

"One purpose is for making certain that the seller knows the buyers to further, promote and cooperate in it." (Page 5 Trial Brief V);

And later on:

"Furthermore, to establish the intent, the evidence of knowledge must be clear and unequivocal. This because no foundation for charges of conspiracy can be made by piling inference upon inference, thus fashioning what, in this case, has been called a dragnet to draw in all substantive crimes." (Page 6 Trial Brief V).

In the opinion of the Supreme Court "surmise, conviction, resignation negligence, indifference" are not sufficient; there must have been "informed and interested cooperation." (Page 6a Trial Brief V).

Consequently, it ought to be proved clearly and distinctly in this trial that a defendant

- a) had positive knowledge of the supply to Auschwitz by Degesch of Zyklon B to be used there for the gassing of human beings;
- b) intended to promote this activity.

This has not been proved in respect of defendant Hoerlein.

PART -- I --

(COUNT 3 IV OF THE INDICTMENT : PARTICIPATION IN CRIMINAL MEDICAL EXPERIMENTS)

The Prosecution accuses Prof. Hoerlein of having generally taken part, in some criminally liable way, in experiments which were carried out in concentration camps with therapeutics from Farben and which were in violation of the recognized medical code. The case for the Prosecution falls short of any concrete charge and relies on circumstantial evidence, presumptions of law and conjectures. The consequently inexact and unclear representations of the Prosecution have compelled the Defense to bring extensive evidence in order to establish the utter untenableness of the charge.

I.

Crime is a product of personality and environment. The judge must attempt to probe into both. If we are concerned with judging conduct which is not determined by possible emotions but, as is the case here, by the normal sphere of activities of defendant, then it is necessary to examine this field in order to establish Prof. Hoerlein's past behavior in this field and if there was any reason to change this attitude which had been adopted for decades and acclaimed by the world, and to change it in such a way as to constitute a crime in the meaning of the charge.

Essentially, Prof. Hoerlein's work centered round the development of a substance out of the darkness of research to the light of knowing that this substance represented a therapeutic remedy.

In his opening speech, General T e y l o r has stated (German trans. 65, page 63):

"There is no need to hide the fact that humanity owes a great deal to the chemists of Farben".

"Defendants were indeed destined to spend their lives in the marvellous world of synthesis and transmutation."

The evidence has produced a clear picture of Hoerlein's personality and life work. Professor Dr. med. L o m a g k, K i k u t h, and W a s s e, who for many years have worked with him and who still work in Elberfeld as heads of the research institute, have given an impressive picture of Prof. Hoerlein as a scientist and man, emphasizing as a special trait of his character the feeling of responsibility for suffering humanity.

Prof. W a s s e, M.D. (Hoerlein Doc. No. 18, Exh. 75):

"I was always particularly impressed by the strong sense of responsibility of Prof. Hoerlein who, though himself a physician, (he held an honorary M.D. degree), possessed a true doctor's integrity".

Prof. K i k u t h, M.D. (Hoerlein Doc. No. 21, Exh. 62):

"The ultimate aim of all his scientific work was always the practical application for the benefit of suffering humanity".

"All his deeds sprang from a deep ethical conviction and, from a hippocratic attitude towards medicine, which would never have permitted him to depart from the moral standards of a true doctor for the sake of material benefit."

Prof. L o m a g k, M.D. (Hoerlein Doc. No. 109, Exh. 94):

"During many years as head of the Institute for Experimental Pathology and bacteriology at Farbén's Elberfeld Plant, I was again and again able to observe the deep sense of responsibility with which Prof. Hoerlein conducted the Elberfeld plant".

In this connection I refer to Dr. L o t h 's affidavit (Hoerlein Doc. 29, Exh. 74):

"Once, at the close of a conference, he defined his sense of responsibility to the effect that the whole meaning of his work was to help suffering humanity, that thereby he felt satisfied, and that he expected the same attitude from us, his co-workers."

and to the affidavit by Prof. Dr. M e i t e r, (Hoerlein Doc. No. 27, Exh. 77):

"My impression of Prof. Hoerlein's personality was that, as a scientist, he had a very strong sense of responsibility to the public and public good".

This sense of responsibility became evident in the institute's exemplary organization and in the methods applied in Elberfeld for the development of medicaments. This could not be expounded and proved more convincingly than by quoting the joint affidavit by medical professors Donagk, Kikuth and Weese (Hoerlein Doc. 40, Exh. 54):

" As Chiefs of the medical-scientific laboratories of the former Farben Elberfeld Plant, we carry the sole responsibility for the institute's scientific work and the resulting animal experiments.

When taking over their positions, Prof. Hoerlein granted Prof. Donagk, Prof. Kikuth and Prof. Weese freedom of action in scientific work, unrestricted in word or letter, as is customary with University Professors. Consideration should merely be given to the fact that, by maintaining contact with the chemical dept. the firm should not suffer any damage from the viewpoint of patent-law.

No restriction was ever demanded as far as scientific work was concerned. According to human knowledge and scientific opinion no harm could be done to the body if the suggested dosage of the medication which had been prepared were followed to the letter, although one cannot always definitely know, merely on the basis of experimental work, what effect the preparation will have when applied over a longer period of time or in larger cases. The testing must therefore be carefully conducted and supervised and the reasons for all secondary effects must be ascertained.

Prof. Hoerlein, who himself is a chemist, has repeatedly told us that we were solely competent and responsible in this capacity, that is in the execution of the experiments, in other words that we were to consider ourselves the "Directors" of the Institute.

This responsibility covers various fields. We are responsible for the observance of the regulations which became effective by the law protecting animals; also for any infections with which the laboratory personnel might become infected in the laboratories of which Prof. Donagk as well as Prof. Kikuth is in charge, where morbid agents of human pathology are handled. Laboratory infections of this type cannot always be prevented despite all protective measures taken, and as experience has shown, they do occur.

The responsibility of Prof. Hoerlein in these matters consisted principally in fulfilling our wishes insofar as possible.

While Prof. Demagk and Prof. Kikuth were responsible in their spheres of work for the discovery and development of new cures and for the therapeutic effect of a new medication, Prof. Weese is responsible for the testing and the secondary effects of such new remedies. Prof. Weese carried the responsibility for purely pharmacological products such as narcotics.

After the draft of a mutual exposé by the competent Chemotherapeutist on the one hand and the Pharmacologists on the other hand is prepared it is subjected to a critical examination by Prof. Hoerlein and other leading gentlemen interested in these questions, whereby not only the medical and the physicians standpoint are taken in consideration but also viewpoints of production and trade. Thereafter the exposé is sent to Dir. Dr. Mertens in Leverkusen, whose responsibility it is to find a competent physician to test the new therapeutic remedy. Therefore it is Dr. Mertens' primary duty to pass on the exposé with the preparations it covers to various offices, in which respect he may exercise free choice, without however being in a position to make any changes in the dosage or the dispensing of the preparation himself, prior to obtaining approval from Elberfeld. The exposé constitutes a definite scientific basis for Dir. Mertens which he cannot alter; he does not carry responsibility for the contents of the exposé.

In some cases, the medical scientists in Elberfeld, by experimenting with themselves and with the cooperation of especially experienced and reliable clinicians, have submitted first hand data on the dosage and effect of a preparation to Dir. Mertens. Prof. Demagk and Prof. Kikuth did and still do represent the standpoint that chemotherapeutic preparations to combat infectious diseases may only be tested on such patients who cannot be helped by any other means. Not until later, when sufficient experience is available, can it be recommended to doctors for use in less severe infection as a means of attaining their goal more rapidly and better.

Dir. Dr. Mertens duties do not by any means end with the turning over of the new therapeutic preparation through the Agency to the doctors concerned; he also takes care that reports on the treatment which are received from various offices, are read by the scientists and critically evaluated and that, at the same time, they are passed on to Elberfeld. On the basis of the experience gathered, corresponding suggestions might possibly be made after discussion with Elberfeld and these would again be passed on to the testing personnel concerned. The principal responsibility for any such corrections in the regulation concerning the dispensing of the preparation rests with the Elberfeld offices.

The High Tribunal is conversant with some of the exposés which were drawn up as

final results of the ELBERFELD development (HOERLEIN Doc.No.81 Exh.67; Doc.82 Exh.60; Doc.87 Exh.68).

Prof.BUTENANDT stated on the witness stand (German trans.6242, Eng.trans.6185)

"The memorandum (on B 1034) fulfills the strictest scientific criteria which you must put up if, on the basis of this memorandum, the drug is to be used on typhus sufferers."

and German page 6243, Engl.page 6186:

"The new preparation was tested in all its aspects, by way of animal tests, so that its harmless clinical application appeared to be safe."

Decisive for the harmless application of the new medicament is the conscientious examination and investigation of the toxicological implications (BUTENANDT-Germ.trans.p.6240; Engl.trans. p.6183).

Prof.Weege, pharmacologist at the ELBERFELD plant, has explained in detail the meaning of toxic content and its verification through the ELBERFELD method (Germ.trans.pp.6386;Engl.trans.pp.6329). The result of this examination was (Germ.trans.p.6390,Engl.trans.p.6333):

"So far as is humanly possible to show, it was out of the question that a sick person who was treated with a drug developed in ELBERFELD during the clinical test, could suffer any damage to his health if the physician observed the regulations about doses etc. contained in the exposé]"

Prof.BUTENANDT similarly stated (Germ.trans.p. 6243, Engl.trans.p.6187):

"Application of this therapeutic (B 1034) could not, by human judgment, inflict any medical harm to a typhus sufferer."

The evidence proves that the application of the new drug with due consideration of the résumé, cannot endanger life or health.

This application of the new therapeutic was carried out in the clinical test. The clinical test represents that stage in the development of a therapeutic substance, where,

on the basis of data and directives of a scientifically sound exposé,

it is determined through the treatment of a large number of homogenous patients whether the medication favorably influences the state or development of disease.

Responsibility for the carrying out of the clinical testing of the Elberfeld products rests with the Leverkusen Scientific Department whose task it is to select the testing physicians, to collect reports on the experiences gained and to pass on those reports to the Elberfeld plant for verifications.

In any case, it is necessary to discuss a statement by General Taylor concerning an application of the new therapeutics which he holds to be inadmissible. General Taylor states (German trans. p. 173, Engl. trans. p. 183):

"At the beginning of the second world war Farben saw the opportunity of entering the use of chemical products for the treatment of disease. The masses of Russian prisoners of war and the innumerable inmates of the national-socialist concentration camps were available as human guinea-pigs for the various Farben chemicals. It was of no particular importance to Farben that many of their drugs had not as yet been fully tested and that others were only in the laboratory stage. The supply of victims was inexhaustible."

The general question arises: "as Farben interested in the testing of the new medications by means of clinical experiments on KZ inmates?

Prof. K i k u t h has testified on the witness stand (Germ. p. 12643, Engl. p. 12489) that KZ inmates cannot be suitable experimental persons since the physical and psychical conditions are not normal; the object of clinical testing, namely to obtain results of the greatest possible general validity, was not realizable.

Is one, therefore, to believe that responsible Farben personalities in leading positions would order the testing on camp inmates of therapeutic preparations, although scientifically and commercially indefensible?

It has even been suggested by the Prosecution that the clinical tests were ordered while being aware of the inadmissible methods, i.e. following the artificial infection of healthy human beings.

The evidence has shown in this respect that artificial infection for therapeutical tests would be absolute nonsense, since a dosed infection always causes much severer illness than natural infection (Kikuth's testimony - Germ p. 12644, Engl. p. 12489/90).

Can one ascribe such senselessness to men like Prof. Hoerlein?

That these are not mere theoretical considerations but actually demonstratable facts, is shown by the following:

In the case of Prof. Hoerlein the Prosecution has repeatedly referred to conferences in the pharmaceutical branch:

The pharmaceutical main conference,
the scientific central conference,
the scientific conference of foreign representatives.

One has to agree with the Prosecution that whenever anything of fundamental importance occurred in Farben's pharmaceutical branch, this subject would be broached, in some form or other, during one of these conferences. It is simply unthinkable that Farben - as General Taylor asserts - exploited a chance given them by the second world war, of at last having their "unknown and untested" preparations tested in P.O.W. and concentration camps, without a single soul in the entire scientific pharma-organization having heard of it.

Thus it became imperative to inquire of all available participants of these conferences:

"Was it ever stated, reported or discussed during one of these conferences at any

time:

- a) that the clinical testing of new Farben medicaments was to be carried out in a concentration camp;
- b) that Farben medicaments were tested on KZ-inmates in a medically inadmissible way?"

25 participants have replied, on their oath in the negative, (Hoerlein Docs. 118/121-124/126-134/138-141/143/146/151-155; Hoerlein Exhs. 118-142).

This proves that at no time was the question of clinical tests discussed at Farben.

This observation is by no means intended to indicate that those persons who dealt with this question, had at any time refused to supply medicaments for KZ inmates. Hoerlein documents 1 and 2 prove that considerable quantities of "Mitigal" for instance were sent to Auschwitz for countering a scabies epidemic.. It may also be taken for granted that Farben medicaments were supplied to concentration camps via normal supply channels, i.e. by procurement through the main medical store of the Waffen SS.

The question arises whether that which holds good in respect of commercial medicaments, also applies to the trying out of new therapeutics through clinical tests.

In order to be able to answer this question, it is necessary to consider the preliminary question whether medical rules concerning experiments on human beings also apply to the trying out of new therapeutics through clinical tests.

II.

The Prosecution confirms this as it argues that medical rules, as established by Military Tribunal No. 1 in its verdict (p. 22-24, German transcript) were disregarded for clinical tests of therapeutical remedies.

I believe that, in the Prosecution's representations, two statements of fact which, in themselves, are different were linked together and that this has caused some confusion.

There can be no doubt on the fact that a therapeutical test following artificial infection is an experiment which is subject to medical regulations;

The problem is whether the treatment of a patient in clinically testing a therapeutic "remedy" is an "experiment".

On this question, in which it is impossible for the laymen to express an opinion, ^{as} Professor Butenandt and Professor Heilmayer, specialists of international reports, have brought about a complete clarification.

On this question Professor Butenandt states:

"Are these rules also applicable to therapeutical clinical tests? (German transcript 6235, at seq. page 6178):

"As I see it, they are not, because they were established for experiments on human beings with which we are not concerned in the clinical tests which we are talking about now. Of course these rules will apply in the sense that they advocate general medical ethics, ethics which would apply to any actions of any doctor. No experiments should ever be made superficially. It must always be justified and in any experiment and with every clinical test every precaution must always be taken."

Question:

Does the rule according to which the experimental subjects must be informed about the purpose and the extent of the experiment apply also to a therapeutical experiment?

Answer: (German transcript 6238, page 6179)

"I don't think so, because the motive, ^{the} justifiable motive that when there are experiments on human beings which have established these rules is not given with regard to a therapeutical experiment.

... . In the case of a human experiment, danger to life and limb is intentionally caused and it goes without saying that the man who carries out the experiment has the duty to draw attention to that danger in every detail. To check up therapeutically on a drug serves the purpose of preventing a danger which already exists to life and limb. I think there might even be considerable misgivings that a doctor might fear to tell a patient of what he has in mind, therapeutically speaking, and tell him in advance of possible unpleasant but innocuous effects, because thus the favorable effects of a drug might be jeopardized by psychological reactions on the part of the patient. Summing up, the conscience of the doctor must adjust itself to the individual character of a patient and he must find out whether and how far he should or should enlighten the patient."

Professor Reimeyer gives evidence under oath as follows:
Document Hoerlein No. 113, Exhibit 73):

"There is no general rule or general medical usage in this matter. (Translator's note: the German text of the final brief reads as follows: "There is no general rule or general medical usage according to which the physician who has been asked to make the clinical tests can apply a compound which has been tested in experiments on animals according to the cost up to date scientific standards only with the previous authorization of the patient concerned".) It is left entirely to the conscience of the individual doctor what answer he gives to that question. In most cases it is useless to describe to the patient the type and effect of the drug administered, because the patient, being a layman, is not in a position to form an independent opinion on the subject, since he lacks the knowledge required for that purpose. He will therefore invariably have to trust the doctor's statements. On the contrary an all too detailed discussion of the possible ill effects of the drug will frequently affect the course of the disease unfavorably, will expose the patient to unnecessary misgivings and will thus weaken or conceal the psychological effect of the drug. Experience has shown that such discussions frequently lead to self scrutiny and hypochondria which give a false picture of the patient's condition. It is a different matter when a new drug must be considered as very dangerous.

But there was no reason for doing so in the case in question (preparation B 1034). The drug had been thoroughly tested in animal experiments, so that it seemed certain the drug could safely be used clinically. In this case we are moreover dealing with a group of substances, the sulphonamides, long known to pharmacology, the possible incidental or adverse effects of which are common knowledge, and which have proved their worth as invaluable drugs in the treatment of numerous infectious diseases.

If it seemed likely in accordance with animal experiments that a new drug of the sulphonamide group might be effectively used in the treatment of typhus, it was not only a valuable suggestion to make for the people who had discovered it (IG plant Elberfeld), that the drug should be used, should the opportunity present itself, in the treatment of this disease,

which has a high death rate, but it was the professional duty of the doctor chosen for that purpose so to do, because no effective drug against typhus has been discovered so far. It might even be considered dereliction of duty from the point of view of medical ethics to deny to a typhus patient any relief science would seem to promise.

The fact that in clinical use the drug did not come up to the expectations raised by the animal experiment, would be no excuse for failure to use it, since in the case of a disease as dangerous as this, anything must be attempted which might possibly have a favourable effect on the course of the disease.

From this it then follows that for the experiments within the framework of the clinical tests we can maintain that the conditions which Military Tribunal No. 1 has established for experiments are not fundamentally binding for handling the clinical test.

In expressing an opinion on the applicants of therapeutical remedies against typhus in the years since 1941 - with which the indictment is concerned - it is a factor of decisive significance that the typhus danger was a general danger of permanent importance (Hoerlein German transcript 6334, page 6278/79, Demitz German transcript 10953, page 10805) and that nowhere in the world are there specific remedies which have any effect upon the virus.

In Germany typhus was an unknown disease and consequently, constituted a very great threat to the people; owing to the absence of immunization the mortality was by far greater than in the Eastern territories. In these circumstances any means which promises any possibility of favorably influencing the course of the disease and the mortality rate had to be tried. Witness: Butenandt, German transcript, 6241, page 6184/85.

In applying a remedy a difference in the mortality rate of (normally) 36%, as against 30%, means that 17% less people ^{die}. Even a reduction from 33% to 30% means that 9% were snatched away from death. With the danger of epidemics being acute it would be an irresponsible attitude were one to refrain from the application of remedies because the therapeutical effect did not come up to the high hopes one had entertained. Nor is there any justification for it even when the tolerance of the stomach, for reasons

inherent in the disease (in the case of typhus a cerebral reaction) is unsatisfactory. Where life and death are involved one must put up with these unpleasant but not dangerous secondary effects while, with due consideration for the individual's constitution, the various types of application are tried out (per os, rectal, or by injection) to find the best resorption.

For a full understanding of the problem it is perhaps necessary to have stood personally at the bed of a son suffering from typhus, without any means for effective help. He who has experienced that knows that if the patient, while his mind is wandering, were able to grasp a thought he would not hesitate for a moment to consent to the application of a remedy which holds out even the slightest chance of relieving his suffering.

It is certain, beyond doubt, that thousands of people suffering from typhus, are indebted to Farben for relief and their cure.

In contrast to the counsel for the prosecution in this trial, the Representative of the Prosecution in the physicians' trial understood the problem properly. Mr. McHoney depicted the standpoint of the Prosecution as follows:

"The only question which we have to raise in connection with this question is whether the 39 persons who were the objects of experiments contracted this typhus epidemic in a natural way or through virus infection. I submit that there would not have been a crime committed at all if these 39 unfortunate people had contracted this epidemic in the concentration camp at Buchenwald and had then been used as objects of experiments to try out the effectiveness of those two drugs Rutenol and Akridin. I say that the Prosecution would have taken this attitude.
(German transcript 1167, physicians' trial).

Consequently it can be considered to be proven that the trying out of new therapeutical remedies in the treatment of concentration camp inmates is not a crime. Only illegal medical ^{treatment} can be criminal, i.e. in this case the application of therapeutical aids after virus infection of healthy persons.

In order to determine whether Prof. Hoerlein as the Prosecution maintains was involved in any manner whatsoever in a responsible capacity as defined by criminal law, in such criminal experiments it is necessary first of all, to examine both the factual and the material scope of his responsibility. This is tantamount to a determination of his organic position in the pharmaceutical set-up of Farben.

III

The relationship with Hoechst, in terms of individuals

1. with Professor Lautenschlaeger.

1.) The Prosecution representations and the evidence of the Defense establish what the Prosecution states in section 152 of the trial brief:

"Hoerlein and Lautenschlaeger ranked as the senior pharmaceutical experts in the Farben."

Although this has been established, the Prosecution repeatedly attempts to give the impression that this is not a case of an organizational, coordinated juxta-position but a situation in which Lautenschlaeger was subordinate to Hoerlein, and that Hoerlein

in the field of pharmaceuticals had the over-all supervision and control, and also the final responsibility".
(German transcript 174, p. 184)

In principle the over-all supervision and control are inherent in the condition of a superior and a subordinate. That such a relationship did not exist between Hoerlein and Lautenschlaeger has been established by examination of the evidence:

8) The Prosecution itself, in its Basic Information, volume I, page 28, has submitted an organization chart of the Sparten which was accepted as evidence, exhibit No. 47, Doc. 47-10029 and Hoerlein Doc. No. 80, Exhibit No. 57.

From this it follows that Professor Lautenschlaeger was the head of the Plant Community Maingau, which, aside from the Hoechst plant under his own management, also comprised ^{the} serum and vaccine plants Marburg and Eyestrup while Professor Hoerlein was in charge of the Elberfeld plant which formed a part of the Plant Community Lower Rhine, headed by Dr. Kuehne.

b) in his affidavit NI-8004, Exhibit 307, submitted by the Prosecution, Prof. Lautenschlaeger ^{confirms,} on line 4, his functions at the Hoechst works as completely independent of Prof. Boerlein.

The closing phrase under subsection 4 reads:

"In this capacity, as the head of the works, I was put in charge of research, production and supervision and welfare of the personnel."

c) The Prosecution witness Dr. Struss when cross-examined stated:

aa) "Prof. Boerlein is not the superior of Professor Lautenschlaeger, the director of the Hoechst plant".
(German transcript 1877, page 1889)

bb) "Professor Boerlein is primus inter pares in the field of pharmaceuticals".
(German transcript 1878, page 1889)

cc) The fields of work of Hoechst and Elberfeld were independent.
(German transcript 1875, page 1887)

It should be remembered that the witness Dr. Struss in his affidavit (NI-9487, Exh. 391) had stated:

"If it is possible to speak of a central technical top-management for the field, it was in Elberfeld, with Prof. Boerlein."

This qualified opinion was the object of a cross-examination.

After the witness had given the answer already cited on the points which are decisive for the relationship between Boerlein-Lautenschlaeger, he answered the concluding question:

"And I now ask you ^{do you} wish to maintain that the central, technical top-management of the pharmaceutical field was in the hands of Prof. Boerlein?"

in the following way:

"To this question I cannot answer with a clear yes or no",

(German transcript 1887, page 1896 English transcript).

After that and in the light of the evidence of the Prosecution there can be no doubt as to the fact that Hoerlein and Leutenachler, from the view point of organization, were of the same rank (peers).

The statement made on oath on this point by Hoerlein was confirmed by the co-defendant Ter Meer, in the witness box, as follows:

He said:

- a) There was no superior management (in the pharmaceutical branch) in the sense of a coordination of all final authority in one single person (German transcript 7240, page 7181).
- b) To clarify it: Herr Hoerlein was in charge of Elberfeld. It goes without saying that thus he not only had the authority but it was his duty to exercise control and supervision in that case; yet I would say that the Hoechst plant with its installations, for example, was in no way under the control and supervision of Prof. Hoerlein; each function was vested, of course, in Prof. Leutenachler who ranked equal with Prof. Hoerlein.

2.) The Prosecution now has indicated Prof. Hoerlein's position as Chairman of the Pharmaceuticals Main Committee (Pharmaceutische Hauptkonferenz) on which it bases its thesis of a "top management" or overall supervision."

Its admission in the Basic Information (volume I, P.21) defines this Committee/^{correctly} when terming it a mixed committee. This corresponds with the statement on oath by the Prosecution witness Dr. Paulmann who confirms the testimony given by 8 members of the Vorstand on the character of the Conference which reads (page 2140/41, German transcript 2135 and NI-5187, Exh.334):

"The Pharmaceutical Main Conference was a meeting of all directors of the pharmaceutical departments of Elberfeld, Hoechst and Leverkusen, scientists, manufacturers, advertising men and commercial people under the chairmanship of Professor Heerlein. It accepted reports on new products, the testing of which had been concluded in medical laboratories, as well as on results regarding products which were still being tested clinically. It made decisions on the releasing of such products and informed itself about the status of the product and the sale as well as on questions of patents and licensing."

The witness Tor Moor also expressed an opinion on this and he stated on oath: (German transcript 7240/41, page 7181/82)

Answer: The Pharmaceutical Main Conference was a commission on which business men, scientists, producers and publicity men were represented and who worked together on the points where their particular field touched and the second conference, the Pharmaceutical Conference was a purely scientific one."

Question: Can the purpose of these conferences be seen in advising the Vorstand about their particular field?

Answer: The Vorstand members belonging to the pharmaceutical Sparte considered among each

other about the policy in the business and technical, producing and advertising fields.

Question: Did non-members of the Vorstand also belong to this conference?

Answer: Yes, a large number of directors.

Question: As Chairman of these two conferences did Prof. Hoerlein have a position that might be termed a superior one?

Answer: No, he didn't have it in those conferences. He was always a primus inter pares towards his Vorstand members and towards his colleagues.

Question: Did he ever try to exercise any control or supervision about those persons participating in the conferences? (Translator's note: the German text says "did he have a right to exercise any control")

Answer: Only to the extent that they were subordinate to him.

Finally, Director Dr. Lutter, for many years secretary for the Pharmaceutical Main Conference gave sworn testimony on the composition and objectives of the Conference, as well as on the position of Prof. Hoerlein as Chairman, in his affidavit Hoerlein, Doc. No. 34, Exh. 56, stating:

"The Pharmaceutical Main Conference was not a body whose task it was to direct or control all departments of the Farben in Elberfeld, Leverkusen, Hoechst and Marburg, but it was of a definitely informatory character and exercised a co-ordinating influence on the various branches of the pharmaceutical departments (from 1938 to 1945, i.e. during a period of eight years, only 11 conferences took place). However, this can also be seen from my explanations given elsewhere, in particular under figures 3, 5 and 6.

Herr Professor Hoerlein's position vis a' vis the members of the Pharmaceutical Main Conference was not that of a superior, but that of a chairman of a conference consisting of offices within the I.G. all of which were on an equal footing.

I should say that the position of Herr Professor Hoerlein vis a' vis the Vorstand members Mann, and Brueggemann, also Lautenschlaeger, who were members of the Pharmaceutical Main Conference, was that of primus inter pares."

(Page 5 and 6 of the Affid. Lutter, Answer to Question No. 8).

In this connection refer to Mann, German transcript 10431, page 10926:

"The Pharmaceutical Main Conference had been set up in order to secure a good cooperation between the laboratories, the production firms and the Sales Combine. It was held at irregular intervals, every few months, and it was presided over by agreement generally by the Senior member of the Vorstand attending. The last time, this was Professor Hoerlein".

All of these statements correspond with the statement made on oath by Prof. Hoerlein on that point. (German transcript 6318-24, page 6262-6269).

3) The Prosecution in this connection (the question of "Aggregate supervision" and "control") has also drawn attention to Hoerlein's position as the Chairman of the Aufsichtsrat of the Behringwerke Marburg A.G.

Evidently it was assumed that Prof. Hoerlein was the Chairman of the Aufsichtsrat of the Marburg works, i.e. of the sero-bacteriological section in Marburg.

That is an error. The Behringwerke A.G. Marburg of whose Aufsichtsrat Prof. Hoerlein was a member had nothing to do with the business management and with the operations of the Behringwerk in Marburg which operated under the firm name of "I.G. Farbenindustrie Abteilung Behringwerke". In 1929 when Prof. Hoerlein was not as yet

a member of the Aufsichtsrat, the Behringwerke A.G. had leased all its plants to I.G. Farbenindustrie. From that moment on there were two institutions which to all appearances had an identical designation:

the company which was the lessor: Behring Werke A.G., Marburg

the company which was the lessee: I.G. Farbenindustrie Abteilung (department) Behring-Werke.

Proof of this has been established:

a) by the Affidavit of Director Zehn, Hoerlein document No. 73, Exh. No. 51,

"The Behringwerke Aktiengesellschaft Marburg/Lehn leased all its plants to the IG. Farbenindustrie Aktiengesellschaft with effect from 1 April 1929, i.e. it administered the funds of the Aktiengesellschaft and had nothing to do with the works, which were managed by the IG Farbenindustrie Aktiengesellschaft under the title IG Farbenindustrie Department Behringwerke. Thus it was neither a right nor a duty of the Vorstand and the Aufsichtsrat of the Behringwerke Aktiengesellschaft to concern themselves over the serobacteriological work of the IG Farbenindustrie Department Behringwerke.

It is therefore correct that Professor Heinrich Hoerlein in his capacity as Chairman of the Aufsichtsrat of the Behringwerke Aktiengesellschaft had no influence on the business operation of the Marburg Department Behringwerke of the IG Farbenindustrie"

b) by the testimony given by the witness Director Dr. Donnitz, the head of the Marburg Behringwerke (German transcript 10942, page 10794)

c) by the affidavit of Prof. Hoerlein (German transcript 6302/3, page 6247/48, German transcript 6387).

Thus Professor Hoerlein had no connection whatever with the Behring-Werk Marburg, whose position in the organizational set-up is indicated on the Prosecution chart (Doc. NI-10029, Exh. 47), neither as regards management nor as regards supervision.

This is equally true with regard to all the so-called Behring Works, such as Eystrup and Lemberg (Lwow). In this regard Director Zahn (Hoerlein Document No. 142, Exh. 111) testified:

(Translator's note: In the German translation Lemberg corresponds to Lwow. Any underscores given in the following quotations are not part of the original).

"As for organizational matters, Professor Hoerlein had no contact with either the production plant of the Behringwerke, or with the Behring-Institute in Lwow. He had no jurisdiction in these fields and was, therefore, not responsible."

As to the Lwow Institute, Lautenschlaeger Document No. 32 says in part (identical with Hoerlein Document No. 147, Exh. 112) concerning the establishment and the organization of the Behringer Institute at Lwow:

"In December 1941, government authorities instructed the Behring-Werke to build an institute in Lwow, which was scheduled to manufacture typhus vaccine according to the Weigl process for all demands coming from the Government General and the Reich. The preliminary work for building the institute was done in close cooperation between the sales department of the Leverkusen Behring-Werke and the manufacturing plant of the Marburg-Behring-Werke, with the assistance of the Hoechst construction division. The company was established as GmbH. (Limited Company). Apart from myself, retaining my residence in Leverkusen and/or Cologne, Herr Dr. Haas of Marburg was appointed business manager, who was transferred to Lwow and who took over the job of plant manager. Administration and organization of the Lwow Institute were handled by Leverkusen; the production, technical and scientific administration by Marburg."

Finally, in Document WI-10059, Exh. 1865, page 2 section 4, last sentence:

"For the planning of the reconstruction and the installations, as well as for the procurement of installation equipment, so far as they can be procured in Germany, Marburg offers its services and organization, just as Marburg likewise assumes responsibility for the supervision and advising of the Institute in respect of scientific matters and production technique, analogous to the procedure used in the case of the other Behring Institutes."

4.) In the already-cited appraisal of Hoerlein's Position (German transcript page 174, English page 183) it is also said:

"... and it was Hoerlein who reported to the Vorstand".

If this assertion intended to mean that Professor Hoerlein alone had to make the reports in the Vorstand for the pharmaceutical division, it stands in contradiction to the statement of the Prosecution in Section 152, Trial Brief III, where it reads that

"Hoerlein, Lautenschlaeger and Mann"

advised the Vorstand.

The testimony of Professor Hoerlein is thereby confirmed in this point. He said (6327 of the German transcript, 6272 of the English):

"Each of the persons reported only for his own sphere. This is proved by the minutes of the Vorstand meetings, which show that at intervals I reported about pharmaceutical developments in the Elberfeld laboratories and that Prof. Lautenschlaeger reported about Hoechst and Marburg laboratories and that Mr. Mann, at shorter intervals than we scientists, reported on the commercial affairs of the pharmaceutical department".

Herr Mann testifies in this connection (German transcript 19431, English page 10297):

"I, myself, as the years went on, gave perhaps about four or five reports per year on questions connected with my fields of tasks,"

5.) In order to represent Professor Hoerlein's position in Farben's pharmaceutical branch as important as possible, the Prosecution tied up the name of Hoerlein a number of times in its statements with the place designation of Leverkusen or with the designation I.G. Leverkusen (section 139 and 152 of Trial Brief III): it even tries to identify Professor Hoerlein with Leverkusen, even if only in a comment in brackets (Trial Brief III, section 138).

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How earnestly this is meant may be seen from the statements of Herr Minskoff in connection with the detailed and basic discussion regarding the admissibility of Document NI-7184, Exh. 1465, and Document NI-12789, Exh. 1833, which encompass the 5 alleged letters of a director of "Bayer" to the camp commander of Auschwitz (German transcript pages 4557 -4576, English pages 4546 - 54).

A terrible accusation is involved here, made during the introduction of evidence by the Prosecution against the defendant HOERLEIN and against Farben with regard to the medical experiments. The Prosecution alleged, namely, that:

a Bayer factory had purchased 150 Polish women from the commander of Concentration Camp Auschwitz, haggled over the price, and finally advised in a cynical manner concerning the results of the experiments: "All experimentees have died. Send another consignment."

This accusation was the most death-dealing arrow which the Prosecution let loose against the pharmaceutical division of Farben: for had it been substantiated by any concrete evidence, no submission of evidence by Farben in these matters would have had any material relevance. And rightly so; for if it were assumed to be proved that responsible persons of Farben had sent such letters and had conducted such experiments, the fundamental basis of every bit of counter-evidence would have been shaken.

Moreover, this matter is of especial importance because the German and American press informed the whole world of this accusation on the basis of the documents of the Prosecution which were made available to them (e.g. the Times, a well-known American weekly, of 24 November 1947), and in a manner that left no doubt that proof existed for this statement;

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this in spite of the fact that the pertinent part of the Afrine affidavit and the Affidavit of the Windt were expressly rejected by the Tribunal, that Afrine was not examined on the witness stand in this matter, and that the section concerning this in the Langyel affidavit was canceled in agreement with the Prosecution.

This matter is also of procedural importance for it shows that the Prosecution proceeded systematically in this part of its argument and tried to give the death blow to the pharmaceutical division of Farben, the very division which up till then had enjoyed the greatest world-wide prestige and undisputed recognition.

The fact that a personal charge was thereby to be made against HÖRLEIN, that he was to be involved as the responsible representative of Leverkusen, may be seen from the remark of the representative of the Prosecution (German transcript 4572, English page 4550):

"...if one crime is committed through the firm at I.G. Farben Hoechst it does not preclude the evidence that I.G. Farben Leverkusen committed similar crimes in the field of medical experimentation."

There is no logic to this argument; however, it does show that the Prosecution wishes to make Prof. HÖRLEIN responsible for Leverkusen.

This becomes particularly obvious in the allegation of Mr. Minskoff (German transcript 4571, English page 4550):

"The responsibility of the defendant Hoorlein is undisputed, as the chief of the chemical bureau and I.G. Farben's Bayer is under his jurisdiction and under his responsibility."

Mr. Sprockhor supplements these statements as follows (German transcript 4572, English page 4552):

"On the legal question concerning the company Bayer, Your Honors will recall from the documents, that after 1926 there was a merger and the firm Bayer merged fully and completely with the Farben and merely had the trade name thereafter, and so there is no question of any independent company, if that could possibly make any difference here."

Every one of these sentences is demonstrably erroneous.

The Leverkusen Works of Farben was one of the main Farben works. A site plan of the entire works is attached to Dr. Wenk's affidavit (Document Heerlein No. 112, Exh. 52a), in which that part of the works premises which was under Professor Heerlein's technical supervision is circumscribed with a green score mark. Dr. Lutter (Doc. Heerlein No. 98, Exh. 52) testifies in his affidavit:

"For reasons of space, the finishing-off of the medicaments (Heilmittel) developed and manufactured in Elberfeld was transferred many years ago to Leverkusen. The so-called making-up works (Konfektionierungsbetriebe) of the Pharmaceutical Department of the Works Combine Niederrhein were situated on the approx. 1.4 sq. kilometers works area there. They cover altogether only 2 % of the works area."

Both these affidavits disprove the argument of the Prosecution. In the Indictment (Appendix A, "Statement of the Positions held by each of the Defendants", page 6) Prof. Heerlein is correctly referred to as "Head (Leiter of the Elberfelder Works"; the Leverkusen works are not mentioned. Dr. Kuchne was the head of these works, and his deputy was Dr. Brueggemann. As the finishing works for the products of the pharmaceutical trade manufactured in Elberfeld, the Leverkusen making-up works, which were under Heerlein's technical supervision, had nothing to do with the Elberfeld research stations or with the development of the new preparations. (See Dr. Kuchne's statements, German transcript, pages 10223-25, English, pages 10084-86).

The made-up preparations were delivered, not on the instructions of Elberfeld, but pursuant to written delivery orders of the sales combine.

"The Sales Combine Pharmaceuticals and Insecticides, also called Sales Combine 'Bayer', had its own supervisory management, i.e. it was subject neither to the works management of Leverkusen nor of Elberfeld."

(So reads the affidavit of Dr. Lutter, Hoerlein Document 96, Exh. 52, last paragraph) also see Dr. Mann's description of the organization of the Sales Combine "Bayer", pages 10429 - 30 of the German transcript, pages 10294-96 of the English).

Accordingly, there is no such firm as I.G. Farben Bayer; this designation appears (within the framework of Farben) only in the signing of the Sales Combine "Bayer", which is an independent unit of the pharmaceutical division, as are likewise the Hoechst and the Elberfeld Works (Document Hoerlein 96, Exh. 52, last paragraph; Hoerlein Doc. 80, Exh. 57).

From the letters of the Elberfeld Works in the document books of the Prosecution and the Defense it may be seen that the Elberfeld Works signed as follows:

"I.G. -Farbenindustrie A.G. Werk Elberfeld".

The Pharmaceutical Bureaus (Pharma-Bueros) were branch offices of the Sales Combine (Document Hoerlein No. 90, Exh. 53, section 3, third sentence; Document Hoerlein 81, Exh. 103; chart under "Sales Department Column A".) Elberfeld had no organizational relationship to these Pharma-Bueros.

Thus, the allegation:

"The responsibility of the defendant Hoerlein for I.G. Farben Bayer is undisputed. . ."

is not merely contested, it is disproved.

Prof. Hoerlein's organizational position in the pharmaceutical division of Farben was as follows:

- a) Prof. Hoerlein was manager of the Elberfeld Works of Farben, including the research stations there.
- b) Professor Hoerlein had the technical management of the make-up plants in the factory premises of the Leverkusen Works.

c) Professor Hoerlein was neither a manager, general manager, nor supervisory official of the works at Leverkusen, Hoechst, Marburg, Ludwig (Lemberg), or of the Bayer-Leverkusen Sales Combine.

Hoerlein's importance is not decreased thereby; it rests on his personal qualities, his scientific importance, his experience and his successes, which are nationally recognized. In a large firm like Farben the leading personalities naturally differ from one another as to professional and human qualities. It is the same within a given division. In the case of equality of organizational status there will always be in practice a primus inter pares. However, it is incorrect to translate such a "erste Exponent" of a particular branch with the word "chief" in English. The literal translation "first exponent" is also the proper one.

There can be no doubt and it will not be contested that Hoerlein was a true primus inter pares in the pharmaceutical branch of Farben.

But what is relevant here is the organizational position which gave him the right and thereby imposed the duty upon him to take responsibilities, to issue orders, to supervise and control.

Prof. Hoerlein had this right and duty in the province of the Elberfeld Works.

The relationships to the other Farben works arose naturally from the fact of the Interessengemeinschaft, in which all the Farben works were embraced and had a mutual relationship. This is particularly evident when there are two works in the same branch. It would be unnatural and anti-thetical to the purpose of an Interessengemeinschaft if these enterprises were to live side by side without any contacts, without an exchange of ideas and experience. In the pharmaceutical branch of Farben there were such points of contact and facilities which served the mutual exchange of information, such as the Main Pharmaceutical Conference and the Central Scientific Conference.

It negates the experience of life to draw a conclusion, on the grounds of such exchanges of information, that the enterprises kept one another informed of current affairs or of all affairs. The experience of life teaches that independently-operated enterprises in the same line of activity have the same tendency not to say more than is absolutely necessary to comply with the set goal of an exchange of information. In this connection jealousy and the striving for independence plays a human role in general.

If the Prosecution proceeds to extend this natural exchange of information to all matters which seem of importance to it in this trial, this is an assumption which is logically unsound, in no way suitable as the basis for the construction of a hypothesis, and it does not release it from the obligation to establish specific proof.

The supposition of guilt under criminal law requires proof by the Prosecution that information was imparted which gave evidence of crime.

Despite numerous documents which have been submitted by the Prosecution it has not been proved that Professor HOERLEIN ever received reports, letters or verbal information from which he gained knowledge of illegal experiments with therapeutic media.

In this regard the Prosecution referred in particular to HOERLEIN's relationships the Scientific Department of the Sales Combine in Leverkusen (headed by Dr. Mertens and the correspondence which this department had with Dr. Vetter.

IV.

Professor HOERLEIN's relationship with the Scientific Department of the Leverkusen Sales Combine.

The Scientific Department of the Sales Combine in Leverkusen was subordinate in organization to the Sales Combine. (Affidavit Dr. Luecker, Hoerlein Doc. No. 85, Exh. 105; Dr. Luecker's testimony, German transcript 650g-09, page 6453 of the English); Affidavit of Domagk, Kikuth and Woese, Hoerlein Doc. No. 99, Exh. 53, section 1, Hoerlein Document No. 81, Ex. 103, chart.) It consisted of 6 subdepartments, of which 1 and 2 were concerned with carrying out the clinical tests. The works at Hoechst and Elberfeld delivered the new preparations which they developed in the laboratory in experiments on animals to the Scientific Department for clinical testing.

The Prosecution characterizes as a subordinate relationship the relationship of Prof. Hoerlein head of the Elberfeld Works to Dr. Mertens as head of the Scientific Department (Pages 80-81 of Trial Brief III, points 138 and 139).

It did not produce evidence for this allegation.

The Defense contests this: it has shown that Dr. Mertens as head of the Scientific Department was responsible, on his own account, for making conscientious clinical tests after he received the preparations and the exposés which belonged to them. In this respect he was responsible to Professor HOERLEIN, and Professor Lautenschlager, from whom he received the preparations. The conscientious fulfillment of this task required that Dr. Mertens submit reports on how the clinical tests were proceeding - which often lasted for years - and on what experience was gained from them: to Professor HOERLEIN for the Elberfeld

preparations, and to Professor Lautenschlaeger for the Heesch preparations.

The Defense has tried to make these facts clear without regard for the obligation to show proof, because if the charges had been logically built up, it would have been expected that the Prosecution would submit evidence to support its allegation: for without such evidence the link is missing in the chain between Professor Hoerlein and Dr. Vetter.

As a precautionary measure the result of the evidence is submitted:

Prof. Dr. med. Demagk, chief of the Institute for Experimental Pathology and Bacteriology of the Elberfeld Works,

Prof. Dr. med. Kikuth, chief of the Institute for Chemotherapy of the Elberfeld Works,

Prof. Dr. med. Weese, chief of the Institute for Pharmacology of the Elberfeld Works

have testified the following in an affidavit (Document Hoerlein No. 99, Exh. 53):

" 1.) The Scientific Department in Leverkusen is a part of the Sales Combine Pharmaceuticals and Insecticides. The head of this department is director Dr. Mertens.

2.) The relations between Elberfeld and the Scientific Department in Leverkusen are shown by the fact, that Elberfeld, after the conclusion of the laboratory work, sends the remedy, together with a detailed exposé, to the Scientific Department with the request to start the clinical tests. This exposé describes the related data, results of the experiments on animals, as well as secondary effects.

3.) Generally speaking, our activity in Elberfeld ends to a certain degree when we despatch the exposé. The ensuing clinical tests are carried out by Dr. Mertens on his own responsibility. With the help of the Pharma-Bayer office, which is subordinated to the Sales Combine, he selects the clinical investigators. Only in special cases does Elberfeld suggest certain specialist doctors who are renowned as authorities in certain fields.

4.) The Scientific Department keeps us constantly informed in writing about the results of the clinical tests. Also telephone and personal discussions with the members of the Scientific Department, Leverkusen, are held whenever and as often as the inquiries from the clinical investigators make it necessary. These discussions are mostly held between

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Dr. MERTENS and his subordinates, Dr. KOENIG and Dr. LUECKER on the one side, and ourselves, viz., the heads of the Elberfeld Medical Research Laboratories, on the other side. Until 1945 Dr. MERTENS also came to Elberfeld from time to time to discuss matters with Prof. HOERLEIN.

- 5.) Dr. MERTENS belongs to the Sales Combine "Bayer" and was therefore subordinated to its head; consequently he was not a subordinate of Prof. HOERLEIN. It was obvious that because of the authority which Prof. HOERLEIN enjoyed and due to his position as member of the Vorstand of the I.G., a certain distance was kept in their relations. This was, however, not the relation between a superior and subordinate. We even had the impression ... that Dr. MERTENS had clinical tests carried out several times without keeping Prof. HOERLEIN or us informed, as we expected him to do.

To our mind, the relations between Elberfeld and Dr. MERTENS were merely those which would naturally exist between two collaborators and such as existed, according to our knowledge, also between Hoechst and Dr. MERTENS. If Dr. MERTENS had been subordinated to Prof. HOERLEIN this would also have implied the supervision or control of the Scientific Department. As far as we know, however, this was never the case."

The witness Dr. Luecker, chief of the sub-department W I (Scientific Department I) German transcript 6514, English page 6459) gave the following testimony:

"Dr. MERTENS was responsible to Professor HOERLEIN for the Elberfeld products and to Professor LAUTENSCHLAGER for the Hoechst products. He was responsible for the proper clinical testing of the preparations concerned."

Dr. LUECKER says in his affidavit, under section 2 (HOERLEIN Doc. 65, Exhibit 106):

"With regard to questions concerning the ascertainment of the therapeutic advantage of new medications, we, that is, the Pharmaceutical Scientific Department (Pharmaceutisch-Wissenschaftliche Abteilung) at Leverkusen, worked independently to a high degree

under section 3:

"The selection of the clinical physicians was left to the Scientific Department Leverkusen."

Dr. LUECKER further testified (German transcript 6515, English page 6460), that Professor HOERLEIN never visited the offices of the Scientific Department, Leverkusen.

Thereby corroboration is given to the statements which Prof. HOERLEIN made on the witness stand (German transcript 6317, English page 6261) concerning his relationship to the Scientific Department Leverkusen and to Dr. MERTENS.

V

Evaluation of the evidence

So far in the presentation of the evidence of the prosecution with regard to the count "Participation in criminal medical experiments" (trial-brief volume III under IV, line 94-153) neither the Elberfeld plant nor the defendant Hoerlein are mentioned in connection with the alleged experiments.

The prosecution mentions the name Hoerlein merely in subsection 138 and 139 trial-brief III page 80/81 by stating:

"The correspondence between Vetter and IG Leverkusen (Hoerlein) which has been submitted in evidence
and
"a telephone call made by Dr. Vetter to Leverkusen on 15 June 1942 during which he informs Dr. Mertens (who is directly responsible to Hoerlein) of experiments in Auschwitz".

It has already been explained that the identification of Prof. Hoerlein's with "IG Leverkusen" as well as the "direct responsibility" of Dr. Mertens to Prof. Hoerlein are an erroneous idea.

Since Dr. Vetter was not subordinated to Prof. Hoerlein either (Doc. Hoerlein No. 106, exh. 72: answer to question 7), and since there was no actual relationship between Prof. Hoerlein and Dr. Vetter (Doc. Hoerlein No. 108, exh. 72: answer to question 8) a prime facie responsibility according to criminal law on the part of Dr. Hoerlein's with regard to any possible criminal act of Dr. Vetter's is out of the question; it would only exist if Prof. Hoerlein had initiated or knowingly tolerated

Dr. Vetter's illegal experiments with drugs from Elberfeld.

The evidence submitted in this connection does not give any grounds for suspicion.

It appears to be of particular importance in this connection that the prosecution, with whom the burden of proof lies, did not call in as a witness the person who in their opinion acted as intermediary between Dr. Vetter and Prof. Hoerlein, namely the head of the scientific department Leverkusen, Dr. Mertens, nor did they call in the heads of the scientific departments I and II (Dr. Koenig and Dr. Luecker). If they omitted to do this it can only have been because the interrogation of these witnesses revealed that they themselves were unable to testify that they had known about Dr. Vetter's illegal therapeutical experiments on concentration camp inmates and, therefore, could not have informed Prof. Hoerlein of these.

Dr. Vetter who, it is claimed, carried out these criminal experiments, was not called as a witness. The prosecution also had to admit (German transcript 4378, page 4361) that the death sentence which they submitted (document NI-12453, exhibit No. 1739) had no bearing on any criminal experiments by Dr. Vetter, whereupon the document was rejected as evidence.

Should it not be assumed that Dr. Vetter would also have been indicted on this count if convincing evidence had been available?

There are also no documents which "speak for themselves" and incriminate Professor Hoerlein. The prosecution refers to the correspondence between the Scientific Department Leverkusen and Dr. Vetter which it had submitted. No Elberfeld-Vetter correspondence exists.

The term "correspondence between Dr. Vetter and I.G. Leverkusen" (subsection 138 Trial-Brief III) is incorrect since a great many letters are letters to colleagues (therefore private) as can be easily recognized. This would be of no importance as long as it was only a question of knowing or not knowing about these letters. Since the question, however, is whether these letters by Dr. Vetter were known to Professor Hoerlein, their character as private letters is important. The witness Dr. Luecker, the superior of Dr. Vetter prior to the latter's drafting into the Waffen-SS, stated on oath that Prof. Hoerlein had by no means known about letters

NI - 9823,	Exhibit 1693,
NI - 9403	" 1694,
NI - 9404	" 1695,
NI - 9412	" 1708
NI - 9413	" 1709,
NI - 9415	" 1710

which are contained in document book 87 of the indictment. (German transcript 6521/2, page 6468).

These letters revealed that Dr. Vetter was working in a concentration camp. The prosecution apparently assumes alone by this fact that Dr. Vetter is guilty. If I follow the prosecution correctly it seems to try to assert that the fact that drugs were placed at the disposal of SS physicians working in a concentration camp justifies the suspicion that these drugs were used for illegal therapeutical experiments. Such an assertion would be synonymous with saying that every SS physician who worked in a concentration camp must be considered a criminal, a fact which every German should have known. A generalized assertion like this cannot be debated nor was any proof furnished. The witness Dr. Muench who used to be a physician at the institute of hygiene of the Waffen-SS in Auschwitz and who had been indicted before the Supreme Polish Tribunal but was acquitted, refuted this general assertion

I believe that the witness Dr. Luecker made a good and true statement on this point:

Q: What was your conception of a camp physician?

A: A physician has to treat his patients no matter where he is. Moreover, it became apparent from the address, that Dr. Vetter was active in the SS hospital. We had to conclude from that that he was treating members of the army.
(German transcript 6524/25, page 6472).

Q: I asked what your conception of a camp physician was - what I wanted to ask you was, what was the activity of a camp physician? Did you think that a camp physician in a concentration camp would act differently there than he would act if he was employed at some other clinic or some hospital?

A: My conception of a physician is indivisible. A physician exercised his activity irrespective of the person he treats. Dr. Luecker and Dr. Koenig testified on oath (Hoerlein document No. 108, exhibit 72, with regard to question 2):

"Dr. Vetter was considered a conscientious, industrious and qualified physician; as a human being too he proved himself to be a good comrade without any visible bad characteristics."

Through knowing Dr. Vetter personally it is easily understood that it never occurred to his colleagues that Dr. Vetter might be doing something which was in violation of medical ethics.

It is also convincing when the witnesses Dr. Koenig and Dr. Luecker state that the handing over of drugs to Dr. Vetter was done in view of the personal relationship but not because of his SS-membership (Hoerlein document No. 108, exhibit 72, subsection 15).

The prosecution has tried to prove that Dr. Vetter carried out illegal therapeutical experiments on concentration camp inmates by infecting healthy people on whom he then tested the efficiency of the drugs.

If the prosecution asserts that criminal experiments were carried out in concentration camps with therapeutical drugs furnished by Farben one would have expected that proof for this assertion would have been furnished in the form of persons on whom these experiments had been carried out.

Since the prosecution does not claim that all people who had been threatened with these drugs, died, it would have been easy to call as witness at least some of these "human guinea pigs". In the doctor's trial the prosecution called as witnesses a considerable number of the unfortunate people on whom experiments had been carried out. How far easier should that have been in this case. It did not furnish this primary proof.

The prosecution did not make it clear whether, through the use of such drugs, people had been killed, or whether during experiments with such drugs people had lost their lives. It apparently used that form of statement which left open two possibilities - the causal and the non-causal. The suggestive influence of the environment of the concentration camp and the medical block, the terrible events - without any connection as to facts - and a retrospective consideration were meant to act as subjective causality. This tactic is very clever since it is applied to people who do not know matters from their own knowledge and experience but whose orientation is based on one-sided retrospective information.

It is difficult to detach from a generalized statement with which collective guilt is to be proved the concrete facts which could be the basis for individual responsibility according to criminal law. It is difficult to escape from the invisible and unconscious

influence of political theories; moral indignation and other sentiments. The danger of this influence during criminal procedure is that the judge frequently does not realize the presence of this influence and is convinced that he is administering ^{justice} and serving the truth.

V I

Has the prosecution furnished proof at all that Dr. Vetter had carried out therapeutical experiments after previous infection in Auschwitz or elsewhere ? It has submitted affidavits by the three prison-physicians, Dr. Tondos (NI-12452, Exhibit 1715), Dr. Klodzinski, (NI-11690, Exhibit 17170) and Dr. Feikiel (NI-12451, Exhibit 1716) and NI-12451 A Exhibit 1743.

The prosecution limited its statement to the alleged "series of experiments" which were carried out with the chemo-therapeutical drugs methylene blue, nitroacridine 3582 and rutanol at the concentration camps in Buchenwald and Auschwitz (line 96 B and C Trial-Brief III).

Nothing is said in this connection about therapeutical experiments with B 1034; nor is the treatment with rutanol and acridine 3582 of people suffering from TB, perceptibly laid down as illegal. In view of the attitude adopted by the prosecution during the doctor's trial, which has already been quoted (page 50 of this closing-brief) this should be impossible just as artificial infection in the case of people suffering from TB is out of the question, or at least has not been asserted by the prosecution.

1.) Nevertheless, in view of the fact that mention is made repeatedly of the treatment of TB afflicted people with the drugs, already mentioned in connection with the typhus treatment, rutanol and acridine 3582, it seems advisable that reference should be made to the report of Dr. Vetter (Heerlein-document No. 114, exhibit 107) and the case histories, which were mentioned in document NI-12452, exh. 1715, interrogation record Dr. Tondos, and which were introduced by the defense .

as Herlein document No. 215, exhibit 143.

In Dr. Vetter's report a report is given of the results achieved with acridine 3582 in treating TB.

The case histories reveal the following:

1. These are very detailed and carefully written case-histories of people who died at the Auschwitz hospital of open TB.
2. Apart from rutenol the medical treatment included also other well-known drugs.

It lasted:

Case 1	-	8 months
" 2	-	9 "
" 3	-	10 "
" 4	-	8 "
" 5	-	14 "
" 6	-	4 "
" 7	-	9 "
" 8	-	9 "
" 9	-	7 "
" 10	-	6 "

3. The cases were all very serious ones. Nearly all patients were already in a relatively advanced stage, when they were admitted to hospital.
4. They were normal clinical cases of open TB. The case histories do not give rise to any suspicion of artificial infection. On the contrary, this appears to be positively out of the question.
5. Some people vomited after taking rutenol. The same persons, however, took to rutenol without difficulty later on when it was administered to them again ⁱⁿ the course of their treatment.
6. The result of the post-mortem examination revealed, according to all post-mortem records: "According to the result of the post-mortem examination none of the organs showed any change which was due to the effect of the rutenol-granulate."
7. The case histories do not give any actual proof that death was caused by the rutenol treatment.

In any case these documents prove that during the treatment of the TB patients with rutenol and acridine 3582 Dr. Vetter

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seriously endeavored to heal and to help; they further prove that the administration of the drugs "did not result in any changes of the organs, due to the effect of the rutenol-granulate."

2.) The period of time can be ascertained beyond doubt during which clinical experiments were carried out with the acridine drug 3582 during typhus treatments in Auschwitz, i.e. during which the question concerning the treatment of typhus with the acridine drug 3582 was dealt with by Leverkussen and the SS-physician Dr. Vetter. (Hoerlein Document No. 216, exh. 146, question 4). It starts on 19 November 1942 when, during a visit in Leverkussen, Dr. Vetter was informed of the existence of the Hoechst typhus-drug 3582, and ends on 24 February 1943, when Dr. Vetter made an oral report in Leverkussen on the treatment of 80 typhus patients with acridine drug 3582. This report corresponds in figures and other details exactly to the document which the prison physician Dr. Polkel made out on 6 February 1943 and which was submitted by the prosecution as document NI-12451 & exhibit 1745 as appendix to the affidavit (document NI-12451, exh. 1716).

Whatever was written prior to 19 November 1942 and after 24 February 1943 to or by Dr. Vetter has nothing to do with the issue C (typhus-treatment with acridine drug 3582).

Section 130 - Trial -brief III, i.e. Dr. Vetter's letter of 4 August 1941 as well as the letter of 7 February 1943 from Hoechst to Dr. Vetter which deals exclusively with the delivery capacity of 3582 for therapeutical application in the cases

of tuberculosis and which is again mentioned in point 140, has nothing to do with the typhus issue,

The prosecution's assertion in point 140:

"The experiments made by Dr. Vetter were similar to those carried out in Buchenwald".

is incorrect. There was a considerable difference between Buchenwald and Auschwitz. While there never was a typhus epidemic in Buchenwald - and this is based on the material of the prosecution - typhus in Auschwitz was endemic, i.e. was spread through natural infection and at times amounted to epidemics. (Testimony of Dr. Muench on 11 May, afternoon-session).

Section 142 is also incorrect:

Dr. Vetter thereupon started a series of experiments with 3582 whereby he occasionally induced artificial infections".

In reality there is no proof that artificial infection was induced in connection with the application of acridine-drug 3582. This is revealed by the evidence submitted by the prosecution itself.

In Section 143, the affidavit of the camp physician Lq. Tondos (exhibit 1715, NI-12452) is quoted as follows:

"In 1942 the SS doctor Helmut V e t t e r arrived in the concentration camp at Auschwitz. My fellow-doctors amongst the prisoners knew him before the war, when Vetter as a representative of the Bayer-firm travelled in Poland, advertising various preparations of this firm. After his arrival various previously unknown preparations, such as RUTHENOL, and others, the names of which I cannot recall, began to be used for treatment, at first of spotted fever. In order to test these new preparations the healthy prisoners were infected by means of transfusions of blood from the sick, the amount of being 5 ccm. These in-

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feeted prisoners had been treated with new preparations. These were all preparations produced by the firm Bayer. He noted on the basis of our observations that these preparations did not cure the spotted fever and the major of patients died.

However, what is not mentioned in section 143, is written in Dr. Tondos' affidavit:

" I do not know any details concerning the doses and the course of the disease, because I did not come in contact with the treatment of typhus with these preparations."

And Dr. Peilich who will be mentioned later on, and who actually testified on the typhus treatment with the acridine drug 3562 from his own experience, stated in his affidavit (document NI-12451):

"On order and instructions of Dr. Vatter, the prisoner, Dr. Tondos from Zakopane, carried out experiments on the treatment of tuberculosis with rifampin."

Dr. Tondos, therefore, cannot testify on typhus treatment with acridine drug 3562 from his own experience, just as in section 143, in that part of his affidavit which has been quoted by the prosecution, he makes a false assertion, since Dr. Vatter had never been in Poland before the war as a representative of the firm of Bayer (Hoerlein document No. 108, exh. 72, page 6). If it is further born in mind that in his entire affidavit Dr. Tondos never mentions drug 3562 by name, there is nothing left in Dr. Tondos' affidavit which would give rise to the suspicion that artificial infection was induced in Auschwitz in connection with the use of the acridine drug 3562 against typhus.

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3. Point 144 quotes from the affidavit of the interned

doctor Klodzinski (Document NI 11690, Exhibit 1717):

"Vetter personally infected the Jews with typhus by means of blood transfusions from sick/sound persons in a quantity of 1 - 10 ccm of blood. He made observations concerning the incubation and course of the disease. These treatments resulted in death. In my room in Block 20 I know of two such cases. There were two victims Dutch Jews..."

It is unimportant here how far this description is correct. The sentences: "in my room in Block 20 I know of two such cases" it is not in document NI 12462 of the prosecution document book, English edition Vol. 87. Nothing however points to the fact that those artificial infections produced according to Dr. Klodzinski for the purpose of observation of the incubation and the course of the disease, have any connection with the treatment of typhus with the Akridin preparation 3582, nor that they were at all done during the short period during which typhus was treated with the Akridin preparation 3582 in Auschwitz. In the whole of the affidavit by Dr. Klodzinski the preparation 3582 is not even mentioned. The witness actually important for the application of 3582 in typhus cases Dr. Feikiel, states in his affidavit (Document NI-12461):

"In the experiments with the preparation (in the previous sentences the treatment of Tb with Rutenol is mentioned) and preparation Be 1034 for the treatment of typhoid fever (i.e. typhoid not typhus) and erysipelas was also employed the prisoner Dr. Klodzinski.

(The words in brackets are mine)

Thereby not only the point 143 but also point 144 for the allegation of the prosecution "that in Auschwitz Dr. Vetter had sometimes caused artificial infections by experiments with 3582 falls down.

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Furthermore one cannot objectively dismiss the doubt that, what the witness Klodzinski claims to have seen from a distance were not infections with infected blood but with convalescents blood. The blood of typhus patients, who are in the state of convalescence is a protective and healing medication, the only one which so far has internationally been recognised as effective.

4. The only one who was really eyewitness of the use of Akridin preparation 3562 for typhus, is the internec doctor Poikiel, who is called upon in point 145 of the Trial-Brief III and whose affidavit (Doc. NI 12451, Exhibit 1716, book 87 and the pertinent inclosure, exhibit 1716 supplement 1743, document NI 12451 A, book 87) is already mentioned. From the affidavit the prosecution uses only the following paragraph:

" After the transfer of Vetter from Auschwitz to Mauthausen, on this order and instruction the preparations were continued to be used in Auschwitz. Vetter came over from Mauthausen in order to check the results obtained in Auschwitz. As we did not obtain any positive results, Vetter was obviously dissatisfied and states that he had obtained very good results in treatment of tuberculosis in Mauthausen."

At this point it must be stated that these statements have nothing to do with the treatment of typhus with Akridin Preparation 3562; because Dr. Vetter was transferred in March 1945 to Mauthausen and the application of Akridin preparation 3562 for typhus in Auschwitz had been terminated on 24 February 1945 (in reality already on 6 February 1945, as is shown by report Poikiel) and

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has never again, neither in Auschwitz nor in Mauthausen been taken up. The paragraph in point 145 from the affidavit by Dr. Folkiel refers exclusively to the treatment of tuberculosis. But what is shown by the affidavit of Dr. Folkiel is, that the eyewitness - in fact the only one - brought by the prosecution for the use of the Akridin preparation 3582 in typhus cases not only says nothing about it, that somehow artificial infections were carried out with it, but also states that the report by Dr. Folkiel on the use of Akridin preparation 3582 in case of typhus, which he made on giving his affidavit and which - as already mentioned - had been submitted by the prosecution as document 1716, supplement 1743, document NI 12451 A, shows clearly that the procedure of the treatment of typhus with Akridin preparation 3582 in Auschwitz was a clinical test on 60 persons suffering from typhus, which - though it did not prove the expected healing effect of the preparation - does not contain any reference to any detrimental effects ascribed to the preparation.

This report by Dr. Folkiel of 8 February 1943, presented by the prosecution, could in this form originate literally from every clinic in and outside Germany as the conscientious data of unobjectionable clinical tests.

5. Point 146 belongs to the subject "application of Akridin preparation 3582 in cases of typhus at Auschwitz" only indirectly. It is not, as stated in point 146, a file note from Hoechst and Leverkusen dated 19 March 1943, but a supplementary statement from Hoechst to Leverkusen to the transmittal of the opinion given in Leverkusen by Dr. Vetter on 24 February 1943.

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closing the whole subject of the use of Akridin preparation 3582 with typhus, the details of which tally with the statements by Dr. Feikiel of 8 February 1943.

6. Point 147 does also not belong to the theme "Application of Akridin preparation 3582 in case of typhus". There were proposed compatibility tests for typhus cases (see to this point affidavit by Dr. Karl Koenig of 11 December 1947 Hoerlein document 97, exhibit 93), but they were never made; for Dr. Vetter at that time already had finally completed the typhus treatment with Akridin preparation 3582 and had gone over to the treatment of tuberculosis exclusively.

7. Point 148 is misleading. The quotation used is not a report by Dr. Vetter, because there does not exist a report from this date, but it is the beginning of the ^{letter} already mentioned in No. 146, from Roehat to Leverkusen of 19 March 1943, containing the subsequent statement of opinion on the application of Akridin preparation 3582 in case of typhus, reported to us as finally completed by Dr. Vetter on 24 February 1943.

8. Also the point 149:

"Farben employee, Vetter, did not only make experiments in SS concentration camps with IG products, but also in Farben's own concentration camp Monowitz."

is incorrect. In document 1489, document III 10 928, which is available also in the prosecution document book 87, German and English edition, the witness Leon Staischak states:

"The camp physician Dr. Helmuth Vetter conducted typhoid experiments on prisoners in the hospital at Monowitz."

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It dealt therefore with the infection which in German is called "Typhus", English "typhoid", and not with the disease, which in English is called "Typhus = spotted fever", German "Fleckfieber" or "Flecktyphus".

I find fault with the incorrect translation of the German term "typhus-Versuche" as "typhoid experiments" (see affidavit Dr. Karl Koenig dated 10 January 1948 Roerlich Document No. 74, Exhibit No. 89). Nobody, not even the prosecution, alleges that these tests were real experiments, i.e. artificial infections with typhoid bacilli.

This is by no means intended to minimize the terrible conditions which according to the material shown by the prosecution must have prevailed in the concentration camp Auschwitz, and which are mentioned already in the above mentioned affidavit by the interned doctor Kladinski. In his affidavit, Document MI-11690, Exh. 1717, it says:

"When the sick had been murdered, the Camp was disinfected. In spite of this, cases of typhus occurred in 1943 and in the first month of 1944. Those sick with typhus were selected continually and exterminated either by means of phenol or in gas chambers."

But two points must not be overlooked.

a) that the 50 persons, who in Auschwitz were treated with the Akridin preparation, were definitely not sent to the gas chambers and that according to the report by Dr. Folkiel 70% got away alive and that only because the

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clinical tests with 3562 preserved these people from the gas chambers; this cannot be looked upon as being criminal.

b) that in 1943 there were so many cases of typhus, that there is little probability for the supposition that human beings were artificially infected with the typhus-virus in Auschwitz.

9. Nor can it be seen from the affidavit by Dr. Feiksel (document NI-12451) and his report of 8 February 1943 (document NI-12451 A) that the 50 typhus patients had in any way been forced to take the Alridin preparation 3562 or were treated in a manner different from the treatment applied to every typhus patient. The typhus, in German also called Flecktyphus, is as is already shown by the origin of the name (Greek "Typhos = mist, narcosis, dulling of the senses) a disease the typical symptom of which is giddiness. The one who has ever visited a typhus hospital will never be able to forget this picture of numb patients, for the greater part not even reacting to being addressed. Also Dr. Feiksel says in his report of 7 February 1943 (Evidence 1716, Supplement 1743, document NI 12451 A, prosecution document book 87:

"It is remarkable that 66% of the patients during the full duration of the disease remained in a condition of somnolence".

In view of his subjective attitude to the question of treatment it is therefore of lesser importance for a typhus patient whether he was a free citizen when in good health or a soldier or a prisoner; for in all three cases he is to an equal extent unable to decide, which treatment he should choose.

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and in all three cases the Doctor alone has the responsibility of treating the typhus patient to the best of his knowledge and belief. At the time when Akridin preparation 3582 was made available, a typhus patient, irrespective of whether he was a free citizen, soldier or internee, did not have a choice of the various drugs. Neither then nor today there exists a specific medicament against typhus with exception of the convalescents serum, which only in some cases can be taken from the weakened typhus-convalescents and which is never sufficient as a medicament during an epidemic. It was therefore not so as though the 50 typhus patients, who in Auschwitz were treated with the Akridin preparation 3582, had had the choice between a tested and effective drug and the new drug Akridin preparation 3582 at the time, on the basis of the exposed and of already reported clinical successes, had to be considered objectively by every doctor as having chances for success. But it is impossible to keep from a reluctant typhus patient a drug considered to have chances of success only because he was a prisoner when healthy.

It was not known in Lovenhausen that Dr. Vetter wanted to apply the Akridin preparation 3582 to typhus cases among prisoners (document Hoorlein 108, Exh. 72, figure 9), but Dr. Koenig and Dr. Leecher state (document Hoorlein 108, Exh. 72, line 11) for the preparations B 1034 and Periston that they, if Dr. Vetter had informed them previously that he planned to treat internees suffering from typhus with it, they would have made the preparation available to him also for this. It would have been inhuman,

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to have give any directives to the Doctor Dr. Vatter, to use the Chloridin preparation 3582 at the time objectively considered as probably successful in typhus, only for German SS men and to deny it to internees suffering from typhus, although in the latter case no generally useful experiences could have been taken from this use; for from the point of view of the clinical testing the curative successes attained in the case of internees by percentage cannot be evaluated as being generally applicable. (Hoorlein German record 6341/42, page 6286; Kilmuth German record 12643/44, page 12489).

In keeping with this on the basis of all material presented by the prosecution one cannot say that it was proved that the use of new drugs of the IG in cases of typhus at Auschwitz was in any way connected with experiments or were carried out as experiments.

With that however the basis of the indictment drops out as far as it is based on the forbidden tests, allegedly carried out by Dr. Vatter.

VII

B 1034 and Methylene blue

Finally it is to be examined what the prosecution had to say about these drugs which were connected with the name Elberfeld: B 1034 and methylene blue.

1) As has already been mentioned preparation B 1034 is not even mentioned in the trial brief. Also in the documents of the prosecution there is no mention of prohibited experiments with B 1034.

The defense has submitted evidence from which the supposition is justified, that B 1034 could have a very good effect in the fight against typhus. (Document Herrlein No. 114, Exhibit 107, file notice by the scientific department Leverkusen of 14 December 1943 on oral report Dr. Vetter about Parieton, B 1034, and Rutenol)

Professor Bury says in his publication: "to the typhus therapy with sulfonamides" - August 1942 - document Herrlein No. 77, Exhibit 58) on the use of B 1034:

"I devoted special attention to an azo-sulfonamide compound, produced by IG Farben as an experimental preparation, under the name of "B 1034" which which had already proved very effective in combatting trachoma, i.e. a virus disease".

"If the fluctuations of the temperature and pulse, the condition of the circulatory system, the central nervous system and the subjective condition of the patient, i.e. the overall clinical impression, are taken as criteria for the severity of the disease, then the experimental preparation B 1034, unlike the usual commercial sulfonamides tried out so far undoubtedly has a certain specific therapeutic value."

Professor Rutenandt stated: (German Prot. 6243 Page 6186)

"It is furthermore to be mentioned that the drug B 1034 belongs to a type of drug, the sulfonamides

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the possible secondary effects of which on human beings have been long known and have proved all over the world already as a valuable drug."

In cross examination of Professor Elberfeld the prosecution attempted to prove, that the witness - and with that Elberfeld - knew of the lack of effectiveness of B 1034 in case of typhus. (German prot. 12618, page 12467) The witness who had found this preparation for the fight against trachoma, admitted to have been sceptical concerning the effect in typhus. But he said that he was convinced through the successes, of which in case of Prof. Seiffert in Leipzig he had convinced himself personally (German prot. 12619, page 12467) and of which other well known doctors reported, that B 1034 could after all have favorable effects in case of typhus.

The prosecution referred the witness to the document NI-12443, Exhibit 1696 (Germ. prot. 12646/7, page 12493/93). But just this document shows that the Russian doctor T reports on favorable effects of the preparation.

There is therefore no proof for the fact that prohibited experiments were made with the Elberfeld preparation B 1034, nor that the result with the treatment demanded the stoppage of clinical tests. In this it must always be recalled again, that there is no specifically effective drug against typhus and that also that ^{success} any/be its percentage ever so small, can in case of an epidemic save hundreds of human lives.

2.) The prosecution alleges in connection with the drug Methylene-blue:

"Professor Hoerlein urged Dr. Hrugowsky, the top hygienist of the Taffen SS, to make prohibited experiments with Methyleneblue."

For proof the prosecution referred to an entry in

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the Ding diary (NO -265, Exh. 1608) dated 10 January - 20 Feb 1943

which is as follows:

"Therapy tests Akridin and Methyleneblue. By instigation of the IG Farbenindustrie as typhus therapeutics are being tested:

a) . . .

b) Methyleneblue, in mice tests tested by Prof. Kikuth, Elberfeld

(Therapy test 12)

Professor Hoerlein and Professor Kikuth have denied every connection with and all knowledge of these experiments.

a) Professor Kikuth in his affidavit (Hoerlein document No.21, Exhibit 62) described the facts under oath as follows:

" I remember that in December 1942 I came in contact with Herr ERUGOWSKY, the director of the Hygienic Institute of the Waffen SS and Lecturer at the University of Berlin, who was known to me as a qualified hygienist from various congresses. At this time cases of typhus assumed the proportions of an epidemic not only at the front, but also among the civilian population, so that hygienists and doctors regarded this epidemic as a serious threat to the lives of many people. It is certain that I discussed with ERUGOWSKY the spreading of infectious diseases and the danger caused by typhus, for which there was no specific and effective remedy, as well as the possibilities of combatting it. At that time I had succeeded in finding out through experimenting on animals that Methylene Blue was effective against typhus causative organisms. This observation I had also published (Zbl. Bakt. I Original Volume 181, page 293 (1944)), and, after the war, I was told by an English scientist that the same observation was made in the U.S.A., independently from me. It is natural that I should have spoken about this discovery of mine with many physicians and scientists and that on those occasions I also suggested Methylene Blue as a remedy. I also mentioned it quite explicitly at the end of my treatise. I therefore pointed out to ERUGOWSKY that this treatment might possibly be successful.

In cross-examination Prof. Kikuth was questioned in detail to the question of the "alleged suggestion" and the "urging" (German protocol 12641/42, page 12486/87).

Mr. do you know
Q. Now witness, may I ask you, who, if anyone, in the IG Farben made that suggestion?

A. At any rate nobody from Elberfeld made that suggestion.

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Q.: ^{Dr.}Witness, did a suggestion - I withdraw that. Methylene-blue was your particular product, was it not?

A.: Yes.

Q.: And you are certain that you personally did not make the suggestion that methylene blue be tested in typhus cases, on or about 10 January 1943?

A.: That I arranged for these tests to be carried out. That is not the case.

Q.: Just so we get the record clear, is it your testimony that you didn't suggest to Dr. Ding that these experiments be made or that you just didn't suggest at that time that there be experiments made?

A.: I did not suggest that any experiments were to be carried out.

Q.: I don't want the word "experiments" to be a word at bar. I want to know whether you suggested that tests be made at that time.

A.: I merely talked about typhus with Mrugowsky and Mrugowski told me that a great number of typhus cases existed in hospitals and I informed Mrugowski that I had found a cure, or rather ^{offshoot} preparation which probably would have some in the case of typhus. Mrugowski then asked me whether he could get this preparation and I told him, this is methylene-blue which can be obtained anywhere, but that I would gladly comply with his desire by sending a large amount of methylene blue from Leverkusen for the treatment of the typhus cases.

Q: When you talked to Mrugowsky, did you also discuss other drugs which the IG placed at his disposal for typhus experiments?

A: No, I mainly discussed malaria prophylaxis with Mrugowsky and we discussed the methylene blue- and typhus problem more or less on the side.

Q: Witness, Dr. Mrugowsky at the time was greatly worried by the possibility of a typhus epidemic; when he discussed the problem with you did he only speak to you of the proposal regarding your own product without mentioning the other products which your firm placed at his disposal for similar experiments? Is that your statement?

A: As far as I recollect he did not discuss any other questions with me at all.

Q: Witness, did you know that Dr. Ding was one of Dr. Mrugowsky's assistants?

A: I did not know Dr. Ding, I only heard about him after the war and since I did not know him I naturally did not know that he worked together with Dr. Mrugowsky.

Q: Did you not see Dr. Ding's report on the results of the typhus experiments with akridin, rotenol and methylene blue during the war? Did you never hear of this report?

A: No.

b) Professor Hoerlein's statement in the witness stand in reply to this assertion by the prosecution as follows: (German transcript 6333/42, page 6280/87):

- 1.) This was the only conference which I ever had with Dr. Mrugowsky (German transcript 6335, 37, 39, page 6280/84). This was occasioned by the combatting of malaria in the East (German transcript 6335, page 6280) Evidence: the order given on this occasion (document Hoerlein No.83, Exh.61).
- 2.) It is possible, even likely, that on this occasion we also discussed the typhus menace threatening the front and ^{our} homeland in that I drew Mrugowsky's attention to Prof. Kikuth's discovery who believed that in methylene blue he had discovered a drug effective against the typhus virus (German transcript 6336, page 6281).
- 3.) It is possible that Prof. Mrugowsky who was greatly interested in Prof. Kikuth's discovery received Kikuth's exposé on his experiments with methylene blue for typhus from Elberfeld (German transcript 6336, page 6281).
- 4.) A correspondence between me and Mrugowsky did neither take place, on this occasion nor for any other reason later on (German transcript 6337, page 6281/82).
- 5.) I certainly did not urge Mrugowsky to make experiments with methylene blue (German transcript page 6282/83); it is out of the question that we spoke about experiments in a concentration camp, leave alone after previous infection (German transcript 6338/9, page 6283/84).
- 6.) I knew that Mrugowsky was a lecturer (Dozent) on hygiene at the Berlin university and the highest medical authority (Hygieniker) of the Waffen-SS (German transcript 6342/43, page 6287).
- 7.) One day it was reported to me that the pharmaceutical office (Pharm-Buero) in Berlin had informed the Scientific Department that Mrugowsky

was expecting the supply of methylene blue. I told Prof. Kikuth to instruct Leverkusen to send methylene blue to Mrugowsky and simultaneously to an army physician who in view of the great emergency in the East had at the same time asked for assistance with his experiments to combat typhus. (German transcript 6339-6340, page 6283/84).

8. I have never received a report from Mrugowsky on methylene blue (German transcript 6338/page 6283).
9. Prior to the collapse I had never heard the name of the Buchenwald concentration camp, nor did I know of Dr. Ding (German transcript 6342, page 6287).
- c) The prosecution realized that their evidence was weak. It is therefore understandable that they endeavored to strengthen their position. It was probably the greatest trump the prosecution could find when they presented document NI-13590, exhibit 1866, the so-called Neumann report, and when the prosecutor with reference to page 6 of this document asked the following question:

"Herr Hoerlein, I am submitting to you NI-13590 which was requested to be marked for identification as exhibit for the prosecution 1866. It is a report by Dr. Heinrich Neumann, which states on page 4 of the English-text I believe it is the last page of the document in front of you, that Mrugowsky carried out experiments with vaccines, which were composed of various drugs and which had been placed at his disposal by Marburg, to ascertain whether there is any difference in favor of one or the other method of production.

I am asking you whether this has refreshed your memory in so far that you will be able to state whether you have actually received a report on Mrugowsky's experiments ? "

It was clear to everyone that with this it was not only intended to be proved that Prof. Mrugowsky had made out reports on the results of some experiments but:

- a) that Prof. Hoerlein had received reports on alleged experiments in concentration camps and
- b) that therefore Prof. Hoerlein had not spoken the truth in an important point of his testimonial.

Realizing that the submitted page 6 of the so-called Neumann report had neither been a part of this report nor had it been dispatched together with the actual Neumann-report, the Tribunal annulled this page of document NI-13590, exhibit 1866 and all questions which had been asked with reference to this page 6. (Court decision German transcript 12762 of 27 April 1948 forenoon, page 12514)

The bearing which this fact has on the trial, is considerable.

- 1.) The Tribunal has now ascertained: the prosecution did not prove, that Prof. Hoerlein had received reports from Mrugowsky; neither on experiments with methylene blue nor on any experiments which had been made by Mrugowsky or which had been made on his suggestion.
- 2.) Thus that part of the methylene blue example becomes void which with regard to an agreement or even a "prompting" regarding methylene blue experiments would be indispensable; for it is possible that the discoverer of a new drug receives reports, without having made a previous agreement with a physician or with a hospital, it is, however, impossible that a personage like Hoerlein or a plant like Elberfeld

would make an agreement with a physician and
alleged by even urge him to make experiments
and then would never receive a report nor remind
him to make one.

- 3.) Thus not only the evidence of a participation
becomes void but also that part of the indict-
ment, according to which Professor Hoerlein
is alleged to have known of the illegal me-
dical experiments in Buchenwald (Dr.Ding).

It must be carefully examined whether Professor Hoerlein received credible knowledge of illegal experiments with drugs procured from other Farben plants, which should have made it necessary for him to take steps to stop experiments of this kind. There is no positive concrete proof for this either.

Since Professor Hoerlein has never been inside a concentration camp (German transcript 6339, 6344, 6369, page 6284, 6290, 6312) since there was neither a direct nor an indirect connection between the Elberfeld plant and any of the concentration camps (German transcript 6339, 6344, page 6284, 6290) and since Prof. Hoerlein did not meet Dr. Ding and Dr. Vetter in his line of duty the prosecution had to rely on circumstantial evidence and assumptions.

Prof. Hoerlein could have obtained information from two sides:

- a) from the pharmaceutical conferences,
- b) from the reports of the Scientific Departments Leverkusen.

With regard to a: If the assumption were correct that the Farben had her new products systematically tested in the concentration camps, the experiments in the concentration camps would have been discussed in pharmaceutical general meetings, in scientific central conferences or in conferences of the representatives of the branch. The prosecution did not furnish any proof of this. In order to clarify this particular point the defense has submitted affidavits of all participants in these conferences as far as they could be reached. 25 participants declared on oath that in these conference neither the testing of drugs in concentration camps was discussed nor the illegal experimenting with IG drugs. (document-Hoerlein No. 118, 121-124, 126-134, 138-141, 143, 146, 151-155, exhibit Hoerlein No. 118-142).

With regard to b) The prosecution has submitted letter and file notes on oral reports by Dr. Vetter to his former colleagues at the Scientific Department Leverkusen. However, no letter and no report has been addressed to Elberfeld. The prosecution on the other hand did not furnish any proof that the Scientific Department Leverkusen had made a report to Professor Hoerlein. They neither called in as witness Dr. Mortens, the head of the Scientific Department, nor the heads of the departments Science (W1) I and II, Dr. Luecker and Dr. Koenig, nor did they submit any affidavits by them. Here too the defense, in order to clarify matters, called in Dr. Luecker as witness and submitted affidavits by Dr. Luecker, Dr. Koenig, Prof. Demagk, Prof. Kikuth and Prof. Wesco and interrogated Professor Hoerlein in the witness stand about this.

This is the result:

1. There is no evidence that Dr. Vetter's letters and reports to the Scientific Department were submitted to Prof. Hoerlein. These letters and reports must not be confused with the current reports by the pharmaceutical offices on clinical tests of which Elberfeld received copies regularly (Kikuth - German transcript 72653 page 72498)

2. None of these documents reveal that Dr. Vetter had carried out illegal experiments with Tarbon drugs, so that even if these letters or reports had been brought to the attention of Prof. Hoerlein he would not have received any information with regard to illegal experiments.

3. The German word "Versuch" as part of the clinical experiment means the treatment of sick persons with new drugs (in English "test") and excludes the possibility of illegal experiments.

Thus the thesis of the prosecution is refuted and it is proved that Professor Hoerlein learned about illegal experiments with drugs neither through the pharmaceutical conferences nor through Farben reports by the Scientific Department Leverkusen.

It must be said finally that the prosecution maintains:

Everybody in Germany knew that these terrible things were happening in the concentration camps.

The question whether what was happening inside the concentration camps was generally known has been brought up in every one of the Nuremberg trials so far, but it has not been confirmed in any judgment.

This question in particular is very difficult to decide for the Tribunal. One must have lived in Germany in order to be able to realize how Hitler and those responsible for the concentration camps prevented systematically and under penalty of death any concrete information regarding the happenings inside the concentration camps from leaking out.

As compared to this assertion which was made without any concrete proof the defense has proved on hand of substantial evidence that the events in the concentration camps were not generally known, especially not the medical experiments:

- Document Hoerlein No. 95, Exhibit No. 78, Excerpt from the book
Dr. Robert Ley "Der SS-Staat"
(The SS-State)
- | | | | | | | | |
|---|---|---|------|---|---|-----|--|
| " | " | " | 44, | " | " | 79, | Excerpt from the German official text of the IMT trial, |
| " | " | " | 89 | " | " | 80, | Excerpt from the book "Arztbeschreiber in Buchenwald" (Medical Clerk in Buchenwald) |
| " | " | " | 100, | " | " | 81, | Excerpt from the transcript of the session of 2 April 1947, Military Tribunal I, Interrogation Mrugowsky |
| " | " | " | 101, | " | " | 82, | Excerpt from the transcript of the session of the Military Tribunal No. I, of 1 April 1947, Interrogation Horn |

Document Hearlein No. 102, Exhibit No. 83, Excerpt from the transcript
of the session of the
Military Tribunal No. 1,
of 16 April 1947,
Interrogation Holscher

"	"	"	90,	"	"	84, Affidavit August Weine, Loc. Scheide in the trial against Pohl, ad al.
"	"	"	91,	"	"	85, Affidavit Dr. Kuehn, Loc. Scheide No. 40, in the trial against Pohl ad al.
"	"	"	92,	"	"	86, Affidavit of the former SS-judge Dr. Morgen, Loc. Scheide No. 35, in the trial against Pohl ad al.

From the evidence pertaining to this count of the indictment the following can be ascertained:

1. The new drugs from the Elberfeld research institutes had been developed and tested according to the highest scientific standards. As far as could be foreseen and according to the exposé the use of these new drugs did in no way ^{endanger} the life and health of the sick persons who were treated with it according to instructions.
2. The assertion of the prosecution that the Farben (pharmaceutical branch) tested new drugs on concentration camp inmates as a matter of principle or systematically, has been refuted.
3. The treatment of sick concentration camp inmates with new drugs which were developed according to the methods of the Elberfeld research institute cannot be objected to either from the legal or the ethical point of view. An intentional refusal to put these drugs to use would have been a crime against humanity.
4. The mere fact that new Farben drugs were used in concentration camps does not necessarily mean:
 - a) that those who supplied the new drugs had something else in mind than what was intended normally and in all cases of clinical tests which were carried out simultaneously, namely the experimental application of a new drug for healing purposes;
 - b) that those, who placed drugs at the disposal of Dr. Vetter, had any idea of the fact that this concentration camp physician, in violation of every medical rule would carry out completely mad- since obviously meaningless- therapeutical experiments after previous infection.

5. Professor Hoerlein is only responsible for the development of the Elberfeld drugs.
6. Professor Hoerlein has neither given instructions nor did he suggest that new drugs should be tested in concentration camps.
7. It has not been proven that Dr. Vetter carried out illegal experiments with therapeutical drugs of the Farben.
8. It is proven that Prof. Hoerlein did not know that illegal experiments had been made with Farben drugs.

Thus the grave accusation by the prosecution, according to which Professor Hoerlein had in some way been participating in criminal medical experiments or had permitted them to take place is not only left without proof but has been refuted.

I am of the firm conviction that the Tribunal will realize how for tactical reasons, which can be clearly analyzed, the prosecution has only vaguely outlined the general events, without the personal and material facts, and without showing the necessary causality and the guilt of the individual defendant. The prosecution has been treading winding paths which are lost in the jungle. You will not want to follow ^{then} /, because you will not want to get lost.

The defense Hoerlein finds it regrettable that due to the withdrawal of counts 53 and 56 of the indictment, they were unable to produce the evidence at their disposal with regard to the sulfonamide and atabrin field. Regrettable, because it is thus no longer possible for us to show on hand of particularly remarkable fields, which are known in the whole world, the true character of the pharmaceutical branch of the Farben, its importance where the suffering of mankind is concerned and its irreproachable attitude towards the world in business matters. One can only judge a person properly if one knows his whole life and all his activities. If the prosecution believes that they have submitted evidence which does not leave any reasonable doubt, they are mistaken. As for as Professor Hoerlein is concerned there is no concrete and definite proof in any sphere. Since only intention with regard to a concrete specification would open the possibility of a punishable offense, a positive proof of a crime, of the knowledge of the crime and the commission, contrary to ones duty, to prevent this crime within ones jurisdiction, would have to be furnished. None of these prerequisites has been actually proven.

However, if the knowledge and the constructive possibilities of a knowledge are asserted, for the Tribunal, the credibility and the entire attitude of the defendant will play a decisive part when considering these possibilities. Apart from the personal impression which the defendant gave while in the witness stand, his human integrity, his scientific reputation and his sense of responsibility shown in this connection and his attitude in business matters over a long period of years, should be of importance. The relevant evidence which has been submitted does not require any comment. It is convincing and does not leave any doubt as to the fact that this man is incapable of any immoral action. It is not as though nothing is known about this man. You have been able to perceive from documents that Professor Haeferlein was not afraid to voice his opinion in National Socialist Germany, which were opposed to the official doctrine, that he fought for the freedom of science, that in opposition to antisemitism he openly aided with the Jews and supported them. This man has been fighting for truth, justice and liberty. His picture is clear. However, nothing seems so important to me as the proven fact that he, as the head, the organizer of the Elberfeld plant and as scientist refused to have any discovery which had been made with his assistance and through his work, openly connected with his name. I let the Tribunal be the judge of what that means to a scientist.

It is difficult for the defense counsel to choose from among the numerous affidavits and testimonials. It is painful for the defendant at his age to have to prove that as a human being and as a scientist he has led a blameless life.

The prosecution has shown the tendency to conclude from certain characteristics, positions and functions that there was at least a suspicion or a willingness to commit crimes. The prosecution must admit that in view of the complete absence of their own evidence and in view of the overwhelming evidence by the defense the opposite conclusion must be drawn, namely that there is good reason to believe that Professor Goerlein did not participate in any criminal action nor tolerate it. Wherever there is any doubt at all as to whether or not he knew anything, this conclusion should indicate that the answer must be "No".

Professor Goerlein is a man with a strong character whose tremendous energy is responsible for the rise to world fame and importance of the Elberfeld plant and its research institutes.

After a war which like this one called for and resulted in immense sacrifices and sufferings, it must seem terrible that a man, is indicted whose thoughts and actions were all concentrated on relieving the sufferings and reducing the sacrifices. The number of soldiers who would no longer be alive if it had not been for sulfonamide and- during the pacific war- Atebrin, is legion. The American public, which in peacetime celebrated the rescue of Roosevelt's son and heaped thanks and honor on Elberfeld and the Farben, has apparently forgotten that without Elberfeld- and that means without Goerlein, thousands of parents would be mourning their sons and thousands of women their husbands.

These facts had been forgotten so completely that originally even Atebrin had been made one of the subjects of the indictment. It was an American

who had said: "without streptococci and without the atom bomb the United States would not have won the war in the Pacific as quickly as they did".

This was the contribution of the Farben plant Elberfeld and thus Hoeferlein to World War II. In my opinion the Farben has every reason to be proud of having contributed that one part of the two which brought the war to an end by which mankind will also benefit in peace-time.

I do not wish to give you an account of Prof. Hoeferlein's almost 40 years of work. You may realize its importance if you will call to mind some of the words which were spoken in this room and were laid down in the submitted documents.

The American Paul Gyorgy said "Hoeferlein" document No. 13, exhibit 8 Loc.-Book V, page 26 German)

"In my opinion the Nobel prize which was awarded to Hoeferlein's colleague, Dr. Domagk, should have been given to Prof. Hoeferlein".

Professor Domagk, the Elberfeld Nobel prize winner stated (document Hoeferlein No. 109, Exh. 94, doc. book V, page 15 German):

"By demanding in a generous way free development of science he rendered a service to mankind as only few have done."

Dr. Ernst Bechinger (document Hoeferlein No. 148, exhibit 117, document book VI, page 41 German) said:

"I consider Professor Hoeferlein one of the greatest benefactors, of mankind, who, in my opinion should go down in history together with a Pasteur or Koch. I am sure that hundred thousands of people owe their lives to Professor Hoeferlein."

I am convinced that the day will come where his outstanding services will be recognized."

Professor Batemant, the director of the Kaiser Wilhelm Institute, Tuebingen, declared (document Hoerlein No.10, exhibit 20, doc. book I, page 80 German):

"In Professor Hoerlein I am honoring and admiring the head, a genius with a great sense of responsibility, of that Elberfeld research institute to which the whole world is forever indebted for its discovery of wonderful and valuable drugs for the benefit of suffering mankind (especially drugs for combatting tropical diseases and bacterial infections)."

Can you imagine that a person like this would permit experiments to be carried out on concentration camp inmates with drugs from his plant, under conditions and methods which are not above-board from the scientific point of view.

There is no need to say any more about this.

While fully conscious of my responsibility as a defense counsel, who could be the servant of justice and assistant of the court, I request that in view of the unequivocal result of the evidence, the Tribunal should acquit the defendant Professor Hoerlein.

- E N D -

CERTIFICATE OF TRANSLATION

14 June 1948

I, John POSBERRY, No. 20179, Gerta KANNOVA, No. 20151,
hereby certify that we are thoroughly conversant with
the English and German languages, and that the above
is a true and correct translation of CLOSING BRIEF
HOERLEIN.

John POSBERRY,
No. 20179

Gerta KANNOVA,
No. 20151

5

CLOSING BRIEF, ITENER
(ENGLISH)

Case 6
Defense

Tribunal VI

Case 5

CLOSING-BRIEF

for

Dr. Max J. Ligner

Submitted by
the Defense Counsel

Dr. HERBERT NATH
Attorney-at-Law

Kung



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- (Reference to the arguments of the attorneys
at Law Dr. von Metzler and Gense)
24. Poland 83
- (Dr. Ilgner did not participate in economic
transactions in regard to Polish factories)
25. Russia 85
- (Dr. Ilgner neither initiated nor carried out business
transactions)

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page

26. Norway 88

(An over-all description of the Norsk Hydro-Nordisk Lettmalt transactions including the reaction on the French shareholders. Voluntary agreements in contractual form without application of pressure or coercion on the part of Farben).

C: Count III of the Indictment

27. Slavery and mass killings 118

(Dr. Jigner never was in charge of the management of a manufacturing enterprise. He had nothing to do with labor questions, neither did he have any knowledge concerning them).

D: Count V of the Indictment

28. Common Plan or Conspiracy 122

(In view of the fact that Dr. Jigner did not even know of the existence of war plans he cannot have taken part in a common plan or conspiracy to wage a war of aggression for this reason alone)

Enclosure to No 2: (Export promotion)

Expert opinion of Dr. Eduard Verle on the subject:

"What were the causes for initiating foreign exchange control, export promotion, work creation measures and autarky efforts in Germany in the years before and after 1933 ?"

C o r r e c t i o n s

to be made in the Closing Brief for Dr. Max ILGNER
(C a s e 6)

Item No.	Page	Line(s)	Correction
1	I.	5/6	Insert after: "Structure and significance of the organization I.O. Berlin NW 7" the words "under jurisdiction of Dr. Ilgner" .....5.
2	III.	11	"An arrangement to promote international scientific understanding ..." should be "An arrangement to promote international economic understanding..."
3	4	13	"German p. 2987-2979" should be "German p. 2978-2979".
4	11	3-5	Correct wording is as follows: "Direct Examination Frank-Fahle by the Defense, Transcript, Engl. p. 9790-91, German p. 9921-22, and Engl. p. 9792-95, German p. 9924-27;"
5	15	last line	"Engl. p. 3395-96" should read "Engl. p. 5395-96"
6	16	last line but one	"should have furnished proof..." should read "should have furnished proof..."
7	28	18	"(comments to Pres. Exhibit 563)" should read "(comments to Pres. Exhibit 363)".
8	29	10	"Farben did not want to break off..." should read "Farben could not venture to break off ...".
9	29	19	Insert after "the A.O." the words "in order to avoid frictions". Then read on ... "and to purify the atmosphere."
10	30	8/9	"the practical work of our own Farben-representations" should read "practical work of Farben's own representatives".
11	32	8	"Geheimrat SCHMITT" should read "Geheimrat Schmitz"
12	32	8	Insert "therefore" after "SCHMITZ".
13	35	26	"Affidavit Mool" should read "Affidavit Moll".

Item No.	Page	Line(s)	Correction
15	38	21	"Thermann's file note concerning the discussions with the German ambassador in Argentina which were held in Berlin..." should read "The file note concerning the discussion with the German ambassador in Argentina, Mr. von Thermann, in Berlin..."
16	38	24	"Page 9789-9800" should read "Page 9798-9800".
17	39	9	"...what the fact that Herr von Thermann's obtained information in Berlin is supposed ..." should read "... what the fact that Herr von Thermann's information was obtained in Berlin is supposed..."
18	41	7	Insert before "Liste of requests" the word "such".
19	43	-	Last position on this page should read: "Exh. 806 (NI-10575), Book 44 etc." instead of "Book 45".
20	44	17	should read "P. 5763, 5764, 5766 etc." instead of "P. 5963, 5964 etc."
21	46	27	"In contradistinction to the claims ..." should read "In contradiction to the claims..."
22	50	7	"Affidavit Baechner" should read "Affidavit Buscher".
23	50	last but one	"...in the years 1929 and 1939" should read "...in the years 1938 and 1939".
24	54	-	Second and third line on this page must read as follows: "Individual cases the foreign exchange supplied to the German diplomatic missions was used. Dr. SCHLOTTERER, the referent in the Reich Ministry..."
25	57	8	Insert after "National" the word "Industrial" (to read: "National Industrial Conference Board")
26	57	16	Insert after "amounted to many millions" the word "Dollars".
27	57	19	Insert after the words "some more" the word "practical".
28	57	23	Insert after "dealt with by Vow" the words "for Farben".

Item No.	Page	Line(s)	Correction
29	58	1/2	"economical discussions" should be "economical reports".
30	58	14	"material extant there" should read "material existent there".
31	59	3	Insert after the word "circles" the words "after the Anschluss".
32	59	15/16	The sentence: "They were not at all secret, nor were the other studies secret." should read: "This, too, as in all other cases, was no secret material."
33	60	8	Insert after "which bore" the word "even".
34	60	7	The words "-though an important part-" should read "-though a large part-".
35	60	14/15	The sentence "Farben had no influence on it." should read "Farben had no influence on this."
36	69	4/5	The words "...at the end of 1939 and had to give up the management for practical purposes." should read "...at the end of 1938 and had practically given up the management until middle of 1940."
37	71 last position		should read "Affidavit Focke" instead of "Affidavit Roake".
38	72 last but one		the words "saw fit" should read "considered it necessary".
39	77/78 last line on 77 and lines 1 and 2 on p.78		should read "I believe I might characterize it very well by saying that he played the tune of peace loudly in order to ignore the blarney of the trumpets of war." (This is in accordance with the Transcript).
40	79	12/13	"...to the question of the carrying-out of common industrial projects with foreigners." should read "...to the question of the carrying-out of industrial projects jointly with foreigners."
41	80	12	"Affidavit Burandt, Ilgner Exh. 118, Dec. 11 etc." instead of "... Dec. 11".
42	83		Third position from the bottom should read as follows: "Affidavit Dr. Reithinger, Ilgner Exh. 37, Dec. 34, Book II, Page 27/28".
43	85	6	"from the end of 1939 until..." should read "from the end of 1938 until...".

Item No.	Page	Line(s)	Correction
44	86	21/22	"mainly personal questions" should read "mainly personnel questions".
45	87	11	"(Pres. Exhibit 77)" should read "Pres. Exhibit 177)".
46	88	—	The words "all submitted during cross-examination Dr. Ilgner on 16 March 1948" should read: "all submitted during cross-examination Dr. Ilgner on 19 March 1948".
47	88	—	The words "Submitted during cross-examination Haeffliger on 26 March 1948" should read "submitted during cross-examination Haeffliger on 16 March 1948".
48	88	19	"Exh. 2030 (NI 12209)..." should read "Exh. 2020 (NI 12209)...".
49	89	5th position last line	"pages 9292-94" should read "pages 9282-94".
50	92	9	"was building" should read "was under construction".
51	93	2	"as early as 1939" should read "even before 1939".
52	93	11	Insert after "amounted to" the word "approximately".
53	94	22	"Page 1074a and 43" should read "Page 10742a and 43".
54	97	7	"to amount to 150 million Norwegian Crowns" should read "to amount to 160 million Norwegian Crowns".
55	97	22	This last para on p. 97 should be marked "g."
56	98	1	"In these conferences it was resolved..." should read "In these conferences both parties agreed...".
57	98	20	Insert after "in view of the..." the words "then starting".
58	98	last line	Insert after "of the capital increase" the words "initiated at that time".
59	99	7	"connected with it" should read "with which it was on friendly terms".
60	99	19/20	"to attend conferences of the French Styre members" should read "to have conferences with the French Styre members".
61	102	1	Insert after "concerning the" the word "impending".
62	107	7	Insert after the word "shareholders" a "+)" and write the following foot note on the bottom of page: "+) see: with regard hereto Wisting Brief Dr. SCHMIDT, P. 110/111".

Item No.	Page	Line(s)	Correction
63	110	6	Insert after "that Farben" the words "or Doctor Ilgen" and continue "or any other defendant".
64	111	2	"25 January 1947" should read "28 January 1947".
65	111	16	"Senator Otto" should read "Senator Otte".
66	112	4	Insert after "we refer" the word "especially".
67	112	19/20	"submitted by the Prosecution" should read "submitted by the Defense".
68	113	14/15	"The opposite is laid down in paragraph 5." should read "The opposite is said above under g."
69	116	24	"paragraph 1)" should read "paragraph j)".
70	117	1	"for the criminal intent" should read "for the state of mind".
71	119	11	"12 April 1944" should read "12 May 1944".
72	122	—	Insert at the end of page "84/ Dr. KATH Attorney-at-Law."

APPENDIX (World)

73	4	9/10	"This could not be a coincidence" should read "This never is a coincidence".
74	5	10	"J.M.Kehbes" should read "J.M. Keynes".
75	6	11	"and how its radiation affected" should read "the radiations of which affected."
76	9	4th from bottom	Insert after "neglecting political obligations" the words "for the United States of America".
77	12	1	"is symbolized by the struggle for a reformation" should read "symbolizes the first phase of the struggle for a reformation".
78	13	4	"protective" should read "protective".
79	14	21	Insert after "advantageous" the words "for the domestic industry".
80	16	2	"decrease or production" should read "decrease of production".
81	16	3	Strike out the comma after "unemployment" and insert a comma after the word "effects".

Item No.	Page	Line(s)	Correction
82	16	4	Insert after "which followed the" the words "English and".
83	21	25	"and professional people" should read "and impoverished intelligentsia".
84	23	last line	Insert after "became" the word "again".
85	29	14	"Measures described "already" should read "measures already put in action".
86	30	18	"self help action of commerce and industry" should read "self help action of industrial economy".
87	33	11	Insert after "desperate" the words "and impoverished".
88	34	7/8	"world economy deviding labor" should read "world economy dividing its work".
89	36	18/21	The sentence "There is no denying that the governing party after 1933 often wanted to make a virtue of necessity, reacting more emotionally than in scientific recognition of world economic connections." should read: "There is no denying that the governing party after 1933, reacting more emotionally than in scientific recognition of world economic connections, often wanted to make a virtue of necessity, to the great displeasure not only of the foreign economic circles."

J. Waller

Additional Corrections

To be made in the Closing Brief for Mr. Max ILSEN.

Page 4

Item No.	Page	Line(s)	Correction
90	99	2	"as early as 1937" should be : "as early as 1939".
91	111	5/6	"That the Prosecution did not succeed" should read "That the Defense did not succeed...."

Closing-Brief ELGNER

In this Closing-Brief the Defense intends to present to the Tribunal a synopsis of the most essential findings from the evidence taken. It is not the duty of this Closing-Brief to give a statement concerning all the voluminous material which the Prosecution introduced in the proceedings and which the defense was therefore compelled to deal with. We are of the opinion that a considerable part of the material submitted by the Prosecution is irrelevant. Legal arguments in this connection are reserved to our pleadings. In compliance with the request of the Tribunal we are keeping the Closing-Brief as short as possible. We have attempted to give a clear survey of the assertions and the evidence offered by the Prosecution against which we present the counter evidence of the Defense. This is followed by the appreciation of the findings of the evidence from the actual and legal aspect. We have therein limited ourselves to the points which appeared to be essential to us.

We emphasize especially that this Closing-Brief is to serve only as a guide through the abundance of the evidence produced. However, we do not renounce any point of the evidence of the Defense not mentioned here.

In the case of our client, Dr. Max ELGNER we have attempted to keep the evidence detailed and clear. Dr. ELGNER when examined in the witness stand, replied to every assertion of the Prosecution so that the Tribunal in the transcript can find a coherent and clear presentation of the Defense's point of view.

Closing-Brief ~~ILGHER~~

We therefore specifically refer the Tribunal to this transcript of the examination. (Transcript of the sessions of 16 - 23 March 1946.) The statement of facts given there has been confirmed in the cross-examination and in the direct examination of witnesses as well as by the documents presented by us in the books Dr. ~~ILGHER~~ I - XII.

To facilitate matters for the Tribunal, we have in the compilation of our Closing-Brief in the main followed the sequence in which the Prosecution in its Trial-Brief dealt with the individual subject-matters.

Closing-Oral ILGNER

A: Count I of the Indictment

1. Dr. Max ILGNER

(Wehrwirtschaftsfuehrer - Rosterg-Club)

(Leader of the war economy system)

Charge:

The Prosecution has attempted to characterize Dr. ILGNER as a typical National-Socialist who supposedly had been endeavoring to make the Nazi Ideology a realization in fact and outside of it (see also Trial-Oral Pp. 93 and 102-103).

Excess Evidence: Affidavit HUSCHKE, Exhibit 756 (NI 6004), Doc. Book 39, Encl. P. 67, German P. 111,

Affidavit Dr. W. JACOBI, Exhibit 776 (NI 7605), Doc. Book 44, Encl. P. 10, German P. 18,

Affidavit Dr. E. KRUEGER, Exh. 320 (NI 4630), Doc. Book 46, Encl. P. 104, German P. 123,

Communication from the Wehrwirtschafts-inspection (War Economy Inspection) VI of 16 March 1937, Exhibit 401 (NI 4633), Doc. Book 22, Encl. P. 14, German P. 113,

Interrogation of Dr. ILGNER by the Prosecution, Transcript, Encl. Pp. 3013-3016, German Pp. 3036-3037,

Counter-Evidence: Interrogation ILGNER, Transcript, Encl. Pp. 9259-9273, German Pp. 9410-9423,

Cross-examination of Dr. KRUEGER by the Defense, Transcript, Encl. Pp. 2953-2960, German Pp. 2974-2979,

Cross-examination of Dr. Frank-Fahle by the Defense, Transcript, Encl. Pp. 1901-1902, German Pp. 1969-1970, Direct examination of Dr. Frank-Fahle by the Defense, Transcript, Encl. Pp. 9602-9604, German Pp. 9933-9936

Counter-Evidence: HIGNER Exhibits 4 - 32, (Document Book
(cont'd) HIGNER No. 1),

Affidavit Dr. HALL, HIGNER Exh. 172,
Doc. 171, Doc. Book XI, P. 1,

Affidavit Dr. KREIBER, HIGNER Exh. 105,
Doc. 103, Book XI, P. 66

The evidence has brought out that during the early days from 1933 on Dr. HIGNER in accordance with his optimistic point of view believed that he should use his influence upon National-Socialistic circles. He had hoped that he and other personalities of the economy through their active participation would be able to contribute to the removal of the revolutionary excesses of National Socialism (Transcript, Engl. P. 2959-2960, German pp. 2957-2979). When he realized after a short time that his efforts along this line were going to be without success, he withdrew and devoted himself with even greater intensity than before to his ideas of international economic cooperation as a contribution towards an understanding between the nations. To promote understanding between the states he became a member of the Rotary Club in December 1933 notwithstanding the fact that at that time already the Rotary Club because of its international aims met with political opposition. The assumption of the Prosecution that Dr. HIGNER had joined the Rotary Club already before 1933 as a spy for GOEBBELS, has been unequivocally refuted in the evidence produced by the Defense (HIGNER Exhibits 10, 11 and 12).

Dr. HIGNER's joining the NSDAP in 1937 was only a formality and necessary to enable him in his capacity of enterprise leader (Betriebsführer) of Farben Berlin NW 7 to ward off the Party Offices' interference with the practical work. Within his sphere

Dr. HIGNER attached no

Closing Brief ILGNER

importance to party membership of his employees (Transcript, Engl.P.1903, German P.1969-70). It never in any way entered into promotions or raises in salary (ILGNER Exhibit 5). Thus "the office of Farben Berlin NW 7 under Dr. ILGNER was actually an island of tolerance and liberalism." (ILGNER Exhibit 5).

Dr. ILGNER's assistance to politically and racially persecuted persons went so far that after 1933 more persons considered as Jews, half-Jews or by marriage related to Jews according to the National-Socialistic terminology were employed in his office than before. The abundance of documentary evidence submitted by the defense (Transcript, Engl.Sp.2957-2959, German pp.2975-2976, ILGNER Exhibits 6, 10, 33-35) shows that it was not a question of individual cases. On the contrary, this assistance rendered by Dr. ILGNER was in conformity with his character and his political conviction. This attitude of Dr. ILGNER is also shown in his support of the Confessional Church which was persecuted in the Third Reich (ILGNER Exhibit 21).

Dr. ILGNER's appointment as Wehrwirtschaftsfuehrer by the GKW in 1938 also does in no way lend support to the Prosecution's point of view. In reality the We-Wi-Fuehrer were confidential men who were to assist the GKW in its struggle against the politics of the Party. There never was a Wehrwirtschaftsfuehrerkorps. The appointment as We-Wi-Fuehrer practically came to be merely a question of a title (ILGNER Exhibit 12).

3. Development and Significance of the Organization Farben Berlin
NW 7, subordinate to Dr. ILGNER.

Charrel The Prosecution has tried to create the impression as if the Office Farben Berlin NW 7 had consisted mainly of the Department of Political Economy (Vowi), the Department of Economic Policy (Wipo) and the Bureau of the Commercial Committee (d.d.K.A.). These departments were supposed to have served the purpose of espionage and propaganda.

(Prosecution-Number 56, Trial-Brief P. 54).

Prosec. Evi- Exh. 339 (NI 10702), Doc. Book 36, Encl. P. 65,
dence! German P. 95.

Exh. 1761 (NI 11957), Doc. Book 32, Encl. I. 46,
German P. 47.

Counter Evi- Examination Dr. ILGNER, Transcript, Encl. Pp.
dence! 9273-74, German Pp. 9423-24;

Cross-examination of Dr. Frank-Fahle by the
Defense, Transcript, Encl. Pp. 1953-64, German
Pp. 1941-43;

Direct examination of Dr. Frank-Fahle by the
Defense, Transcript, Encl. Pp. 9613-19, German
Pp. 9951-52;

ILGNER Exh. 33, Doc. 33, Book II, P. 1;

ILGNER Exh. 34, Doc. 33, Book II, P. 8;

ILGNER Exh. 35, Doc. 33, Book II, P. 17;

ILGNER Exh. 173, Doc. 172, Book XI, P. 5;

ILGNER Exh. 50, Doc. 51, Book II, P. 84.

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The fact that the organization Farben Berlin NW 7 subordinate to Dr. ILGNER had no special designation, was already an indication of its homophreuditic position. It was an auxiliary organization of the Farben which by no means had the final say (ILGNER Exh. 33, 1, 3). The core of the entire organization Farben Berlin NW 7 was and continued to be the Central-Finance Administration. There was, besides, a series of larger and smaller departments of NW 7, such as the Legal Department, Export-Promotion Department, D.A.K.A., Wipo, Vowi and Kreis office all of which stood second in importance to Zefi (Central Finance Administration (ILGNER Exhibit 33 and 34).

Outside of these departments there were still several central departments in the Farben, for example Central Purchasing, Central Dockkeeping, Central Tax Department which had nothing to do with Farben Berlin NW 7, were not subordinate to Dr. ILGNER and the total extent of which was considerably larger than the whole Organization Farben Berlin NW 7 (ILGNER Exhibit 33, 1, 2 and 3).

Farben Berlin NW 7 also was not a sort of Central Administration of the Farben; owing to the strong decentralization efforts in the Farben, such centralization never occurred in the Farben (ILGNER Exhibit 34, 1p.14 and 15). Nor was Dr. ILGNER one of the three "Hauptleiter (main leaders) of Farben as has been asserted by the prosecution's affiant DIELS (Proc. Exhibit 1761). Apart from the fact that with the decentralization of Farben such an organ never did exist, Dr. ILGNER was until 1930 merely an acting member of the Vorstand and only with the dissolution of the organ of acting members of the Vorstand did Mr. ILGNER automatically become a member of the Vorstand (Transcript, Engl. P.9253, German P. 9404 and Engl.P.9019-19, German Pp.9051-52).

3. M-(Mobilisation) Question (Mob-Question)

(Pres. Trial Brief I.17)

<u>Charge:</u>	The commercial members of the Vorstand too, among them Dr. ILGNER, are supposed to have taken an active part in the preparation and execution of so-called Mob-plans.
<u>Pres. Ex- hibit:</u>	Exhibit 195 (NI 5770), Book 8, Engl.I.23, German I.23 Exhibit 200 (NI 9051), Book 8, Engl.I.30, German I.30
<u>Counter Evidence:</u>	Interrogation ILGNER, Transcript, Engl.Ip. 9275-77, German Ip. 2426-47; Cross-examination Dr. KRUGER by the Defense, Transcript, Engl.Ip. 2990-2991, German I. 3009, and Engl.Ip. 3001-3002, German I. 3022; Cross-examination Dr. SOCK by the Defense, Transcript, Engl.Ip. 2047-50, German Ip. 2063-2065; Cross-examination Dr. Frank-Pablo by the Defense, Transcript, Engl.Ip. 2018-19, German Ip. 2000-2002; Affidavit KRUGER, Exhibit 259 (NI 7662), Book 10, Engl.I. 39, German I. 50.

The Mob-question was elaborated:

1. for the manufacturing plants and the Technical departments of the Farben by the "Vermittlungstelle W",
2. for the commercial departments by the Wipo (Department of Economic Policy).

Dr. ILGNER had charge of the latter, whereas it has never been disputed that he had nothing to do with the Vermittlungstelle W. About 1937 the Reich Ministry of Economics

demanded that lists be made up for the entire industry giving the names of the employees which in the case of a mobilization were not to be drafted into the Armed Forces, hence were to be designated as indispensable (un-status).

It was requested moreover that the industry should answer questions along import and export lines which in the case of mobilization would be of interest to the Reich Ministry of Economics. Actually the Wigo, the only one interested here, furnished simply the desired lists. Dr. ILGNER as witness rightly points out that the questions asked by the Ministry about import and export, were purely theoretical. "For if one does not know with whom one will be at war, then one cannot tell from where to import or whar to export" (Transcript, Engl. P. 9277 Engl. and German P. 9427; see also Exh. Exhibit 250). Thus all that was done was to compile the lists of those who were indispensable. The witness NOACK who before he came to Farben was dealing with war-economy questions in the Ministry of Economics, hence is especially competent, confirms that, notwithstanding its position in Germany, Farben "had from the commercial side not yet concerned itself with these matters" (see Transcript, Engl. P. 2049, German P. 2065) and makes it very clear that the question was that of a duty imposed by the state upon the entire industry. Although other defendants are stating their attitude on this question more in detail, it is to be pointed out here that it involved a measure which at the very same time was taken not only by the United States but also by many other foreign countries, for example by France. Such a state measure can never be circumstantial evidence, much less

a proof for the assertion of the Prosecution that the defendants know of HITLER's plans for a war of aggression or had such plans themselves.

4. Promotion of Exports:

(Cross-Trial Brief P.67)

(Indictment Number 49)

Charge: Some defendants, among them HUGER, together with government functionaries prepared export programs for the entire German industry and devised methods to increase the German sources of foreign exchange.

Cross-Examination:

Exh. 762 (NI 1570) Book 45, Engl. P.65, German P.53;
Exh. 763 (NI 5726) Book 41, Engl. P.57, German P.105;
Exh. 764 (NI 5726) Book 41, Engl. P.60, German P.125;
Exh. 766 (NI 4453) Book 41, Engl. P.64, German P.143;
Exh. 766 (NI 4930) Book 41, Engl. P.79, German P.130;
Exh. 362 (NI 4927) Book 41, Engl. P.83, German P.115;
Exh. 765 (NI 5743) Book 41, Engl. P.75, German P.133

Counter Bridgman Examination ILGNER, Transcript, Engl.Sp. 9270-9277 and 9377-9379, German Sp. 9426-9441;

Direct Examination Frank-Fahle by the Defense, Transcript, Engl.Sp. 9790-91, German Sp. 9808-09, German Sp. 9924-27;

Cross-examination Frank-Fahle by the Defense, Transcript, Engl.Sp. 1996-2000, German 1997-1999;

ILGNER Document Book VI, ILGNER Exhibits 99-112;

Affidavit WALTER concerning the development of the Farben sales abroad with diagram, Defense Exh. 170 and 170, Basic Information, Volume 2, Pg. 10 and 10.

The Prosecution's assertion that Dr. ILGNER or other members of the Vorstand of Farben had worked out export programs for the German Government, is absolutely incorrect. Dr. ILGNER's Export-Promotion-Memorandum of 1937, presented by the Prosecution as Exhibit 782, shows in a manner which rules out every doubt that he did not work out export programs or suggest measures for the promotion of export, but that, on the contrary, in the interest of the private economy he criticized the state's export-promotion-system that had been in existence for years.

This is further underscored in an abundance of documentary evidence which the Defense has submitted to the Tribunal on the subject Export-Promotion to which Document Book VI has been devoted. The affiant DIELMANN, one of Dr. ILGNER's co-workers on the Export-Promotion-Memorandum, confirmed from his own knowledge of the connections that Farben had difficulties in its export business due to the manipulation of the existing measures of the state for export-promotion. For this purely private-economic reason Dr. ILGNER found it necessary at the time to bring the difficulties encountered by the economy

to the attention of the competent State authorities. The object which Dr. ILGNER had in mind with this memorandum, was a stronger interpolation of the private economy in the practical execution of the export-promotion (ILGNER Exhibit 104).

When Dr. ILGNER added the expression "In the scope of the Four Year Plan" to the title of the Export-Promotion-Memorandum, it was done for the purpose of getting a more favorable reception for his statements with the authorities. The Four Year Plan had come to be such a commonly used slogan at that time that one always used it when one wanted to attach special importance to a matter (ILGNER Exhibit 99, Number 4, Transcript, Engl.P. 3236, German P. 9436).

For the rest the prosecution has so grossly misjudged the nature and significance of the export-promotion-measures in Germany that the Defense found it necessary to procure the opinion of an expert in political economy on the topic

"What were the causes for the development of the Foreign-Exchange-Control, the Export-Promotion, the measures for the procurement of work and the efforts towards German autarky during the years before and after 1933?"

which statement is submitted to the Tribunal as an enclosure to this Closing Brief. This expert opinion has been drawn up by Dr. Eduard WIELE under the aegis of the internationally recognized expert Professor VAGEMANN, the former President of the Statistical Office of the Reich and the German Institute for Economic Research.

This expert opinion sets forth in a scientifically founded manner the necessity of Germany's economic development with respect to the world economy since the time of the first world war. This has moreover

Closing-Brief ILGNER

been confirmed by authoritative experts of the Reich Ministry of Economics whose affidavits have been submitted by the Defense as ILGNER Exhibit 99 and ILGNER Exhibit 100. The German export-promotion-system created in 1935 was conceived exclusively upon the initiative of the state. It almost had to be forced on the German economy because the creation of export-promotion-funds imposed an exceptionally heavy financial burden on the economy. The larger part of the German import goods did not consist of goods for armament or raw materials essential for armament, but rather consisted of victuals and raw materials for civilian consumption. Their procurement was a question of existence for Germany. The affiant SCHLOTTNER has confirmed that leading foreign circles at the time had clearly recognized and expressed to him that an adequate German export would be the surest means of supplying Germany in a peaceful way with those import goods essential for its existence. "The German export-promotion accordingly was in no way a means to the preparation for war, but on the contrary a means to avoid war and to guarantee peace". (ILGNER Exhibit 99)

It has moreover been proven by the Defense that the entire German export was under the control and direction of the Reich-Ministry of Economics, as was also revealed by the fact that the Reich Ministry of Economics assigned certain tasks to the export firms (ILGNER Exhibit 99). Farben also received such assignments from the Reich Ministry of Economics, to transact certain export deals or to make suggestions for export measures. This is shown clearly beyond a question.

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in the Prosecution documents, Exhibits 263, 363, 764 and 765. We also in this connection refer to ILGNER Exhibits 106, 107, and 109. Farben tried to elude these manifold requests of the authorities as far as possible because they proved a considerable disturbance to their business (ILGNER Exhibit 110).

To what extent Farben from the private economic point was interested in keeping up its export business may be clearly seen from the structure of the Farben-business since the year 1935 (Defense Exhibits 178 and 179). Besides, the transaction of export business was Farben's only opportunity for reducing the colossal financial burden imposed on it by the state's measures for the promotion of export (ILGNER Exhibits 106 and 104). Contrary to the suppositions of the Prosecution, this explains why Farben was so greatly interested in questions of export and export promotion.

5. Ivy LEE

(From Trial Brief P. 55)

Charge Alleged propaganda activities of Ivy LEE, The American expert Ivy LEE was supposed to have been hired by Farben against a payment of 25,000 Dollars to advise Germany in matters of Nazi-Propaganda in USA. ILGNER was to have arranged interviews with GOEBBELS and others for him. In pursuance of the program that had been elaborated with Ivy LEE, Farben by order of the German Government supposedly sent tremendous amounts of propaganda material abroad.

From Evidence Exh. 772 (NI 5702), Book 17, Engl. Pp. 23-25, German P. 42;
Exh. 776 (NI 7603), Book 44, Engl. P. 10, German P. 10;
Exh. 777 (NI 10921), Book 44, Engl. Pp. 21, 27, 33, German Pp. 21 seq.

Counter Evidence From Exh. 777 (NI 10921), Doc. Book 44 (Testimony Ivy LEE in toto)

Examination ILGNER, Transcript, Engl. Pp. 9306-9402, German Pp. 9427-9454;

Direct examination Frank-Sabla by the Defense, Transcript, Engl. P. 9001-9004, German P. 9933-9936;

Subsequent examination KRAUCH by the Defense, Transcript, Engl. Pp. 3395-96, German Pp. 5426-27;

Counter Evidence: HLOMER Exh. 93, Doc. 35, Doc. Book V, Pp. 45-47;

HLOMER Exh. 94, Doc. 121, Doc. Book V, Pp. 66-70, Exh. 4;

HLOMER Exh. 190, Doc. 107, Doc. Book XI, P. 60.

We think it indicated here to make a few basic remarks about the relevance of those charges which the Prosecution under the designation "Propaganda" has tried to subsume under Count I of the indictment. This applies especially to the Ivy LEE charge but also to many other charges brought against Dr. HLOMER under Count I of the indictment.

In the opinion of the Defense the argument of the Prosecution on this point is irresolute, i.e. it is legally irrelevant even if it were correct as far as the facts are concerned, which, however, is not the case.

There is no international regulation which declares propaganda in itself so long as it does not offend against other laws, as a punishable action, at least not in countries where democratic principles guarantee the freedom of speech. Political propaganda could possibly form the basis of a crime against the peace be considered as liable to prosecution if it is carried on with the knowledge that the government or other leading authorities have intentions of aggressive warfare, and for the purpose and with the aim thereby to further those plans of aggression. Hence, the Prosecution should have furnished proof of at least these two circumstances:

- 1) Dr. ILGNER's knowledge of HITLER's plans for aggression, and
- 2) the usefulness of his alleged propaganda measures for the promotion of this purpose.

The Prosecution has failed to furnish any proof whatsoever on these two points. After leading functionaries of the state and the Party such as SCHACHT, von PAPER, GIESE, KALTENBUNNER, FRANK, SEIBINGER, von SCHIRACH, BAUCKE and FRITSCH were acquitted on this point by the International Military Tribunal, it would have required extensive documentary evidence in order to bring such charges against the men of the economy who were so much more remote from the organs which formed the decisions of the state. Nothing of the sort has been done; the Prosecution did not even attempt to produce such evidence against Dr. ILGNER. Beyond it the Defense has proven the opposite, in which connection we refer to No. 21 of this Closing-Brief.

The Prosecution did not explain nor is it manifest otherwise, just in what way propaganda of the alleged type could have been suitable to promote plans for aggression. Just how would war-plans have been promoted if Dr. ILGNER for example had carried on Anti-Semitic propaganda abroad, as he has been erroneously accused of by the Prosecution? The only result of such a Nazi-propaganda, if it had ever been carried on at all, would have been the rousing of the natural defense forces of the respective country and attacks against HITLER's politics. Thus the outcome would have been exactly the opposite of what the Prosecution would have needed to prove as support for its point of view.

For this reason we consider the Prosecution's entire argument on the subject of propaganda under Count I as irrelevant.

Apart from this, in the case of Ivy LEE the Prosecution failed to furnish any proof whatever for its assertions, not even concerning the actual facts. The cause for Ivy LEE's involvement by Farben was a violent anti-German press-campaign in the U.S.A. in 1933 which led to a boycott of German industrial products. Farben, as the largest German exporter, felt this very keenly and if the boycott movement continued to spread, its very existence would be endangered. It is a foregone conclusion that a business enterprise has the right, by the use of decent means to avert such dangers. That the measures taken by Farben upon Ivy LEE's advice were fair, is shown in the testimony Ivy LEE (Exhibit 777) introduced by the Prosecution. It was exactly Ivy LEE's decisive point, not to conduct a political propaganda; he was much rather for the idea of fair publicity and the principle of "come and see" which consequently was carried out by Farben. The actual activity on the basis of Ivy LEE's suggestions consisted in the fact that articles concerning German economic problems of special interest to foreign countries, written by Germans of international repute and published in German periodicals, were sent to certain people in the U.S.A. (ILGHEI Exhibit 93). As was clearly shown by the evidence, it was not Farben who sent "the huge amounts of propaganda material" mentioned by the Prosecution to the U.S.A. (ILGHEI Exhibit 93 and Examination ILGHEI, Transcript, English Pp.2336-2402, German Pp.9447-9464). From the testimony Ivy LEE, which was the only documentary evidence the Prosecution presented on this point,

one can not even gather what type of material really was involved. Probably it was travel pamphlets from the Reich-Railway's Central Office for advertising to promote travel in Germany, with which Ivy LEE's son James had business connections in Berlin (Transcript, Encl.Pp.9394-95, German P. 9457). That all of Ivy LEE's activities in this connection were unobjectionable according to the official American conception, is shown by the fact that following the proceedings against him before the U.S. Committee for Un-American Activity in 1934, no steps whatsoever were taken against him or his firm. - In view of this, the indefinite statements, devoid of any concrete information about facts, which were made by the affiant Dr. W. JACOBI when the Prosecution unfortunately did not admit for a cross-examination, are of no conclusive value. Moreover, the witness Dr. Frank-Fahle in direct examination proved conclusively (Transcript, Encl.P.9301-04, German P.9233-36) what great deceptions Dr. JACOBI had fallen a victim to.

Concerning the happenings in connection with the publicity agent Ivy LEE, the Prosecution on pages 33 and 34 of its Trial Brief stated that Farben's reaction "to the American boycott had been to wage a violent and malicious propaganda campaign", "such as would have done honor to GOEBBELS himself". The arguments of the Prosecution do not cover such a formulation, not in the least. It might therefore be of interest in this connection only as evidence for the manner in which the Prosecution here as well as in other cases has attempted to bluff with exorbitant assertions where documentary evidence was lacking.

6. F-Circle: (Wirtschaftsfuhrer-Circle)

(Trial Brief P. 54)

Charge: ILGNER supposedly rallied industrialists round a program for the preparation of propaganda for abroad. A circle of economic experts, including Dr. ILGNER, was supposed to have been formed for that purpose. GOEL-
LIS was supposed to have participated.

Prose Evidence: Exh. 26 (NI 4833), Doc. Book 46, Engl.P.14, German P.11,

Exh. 772 (NI 6703), Doc.Book 17, Engl.Pp. 23 and 26, German P. 42
(ILGNER Affidavit with correction as ILGNER Doc.107, Supplementary Volume XI),

Exh. 320 (NI 4021), Doc.Book 46, Engl.P.104, German P.123.

Counter Evidence: Examination ILGNER, Transcript, Engl.Pp. 9379-86, German Sp.0441-47;

Cross-examination Dr. KREHMER through the Defense, Transcript, Engl.Pp. 3267-69, German Pp.2036-37;

Direct examination Horzog in Hocklenburg; by the Defense, Transcript, Engl.P. 9773, German Pp.9503-03;

Affidavit RUPERTI, ILGNER Exh.90, Doc.02, Volume V, P.20;

Affidavit MPASSARGE, ILGNER Exh.01, Doc.03, Book V, P.31;

Affidavit von WILDMANN, ILGNER Exh.02, Doc. 04, Book V, P.34

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If any importance whatsoever could be attributed to this so-called F-circle, which lasted hardly more than one year, then it is - as shown by the evidence submitted by the defense - a quite different one than attributed to this organization of German economists by the prosecution. It does not have to be discussed in detail why the German export industry was interest^{ed} in maintaining its connections in foreign countries also after the seizure of power by the Nazis. It will be shown in our plaidoyer what eminent importance this had for the economic situation of German export firms.

The initiative for the creation of the F-circle was taken by the Propaganda Ministry. Goebbels, resp. his then State Secretary Funk, called in some economists, among them also Dr. Jlgner. The affiant Freiherr von Wilsowsky who himself was a member of the conspiracy group of the 20 July 1944 and who, in connection therewith, was arrested and taken to a concentration camp, has characterized the individual economists who belonged to the F-circle, as follows:

"that a small circle composed of people like that could not be a Nazi-circle, is evident." (Jlgner Exh. 92)

The members of the F-circle attempted to point out to the Ministry for Propaganda that certain measures of the Nationalsocialist Government were untenable and that they had disadvantageous effects in foreign countries, in order to promote a change (of these measures) in the interest of German export (Jlgner Exh. 91)

Especially Dr. Jlgner criticized with courage and vigour the national-socialist measures, because of his foreign experiences. The opinions of the economists of the F-circle and those of the

Propaganda Ministry proved to be so different that it never came to a practical collaboration, let alone ^{to a} actual execution of any orders. The F-circle dissolved itself after a few meetings (Jigner Exh.90).

In order to avoid misunderstandings, we believe it necessary to point out here once more that this so-called F-circle had nothing to do with the "Freundeskreis Himmler" (Himmler circle of friends).

7. Vereinigung Carl Schurz.

(Proc. Trial Brief p.55)

charges

(under par.61 of the indictment:) That in 1933 Dr.Jigner became chairman of the Carl Schurz Vereinigung which concerned itself with the spreading of Nazi propaganda.

Prosecution evidence: Exh.772 (NI 8702), Book 17, Engl.p.23-25, German p.42

Exh.397 (NI 6699), Book 17, Engl.p.48, German p.89

Cross-examination Jigner by prosecution, Transcript, Engl.p.9674-9685, German p.9800-9810;

Exh.2031 (NI 14558), Diary of the American Ambassador Dodd, submitted during the cross-examination;

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Prosecution Evidence:
continued

Exh.2029 (NI 14318), submitted during
cross-examination;

Exh.2026 (NI 14315), submitted during
cross-examination;

Exh.2027 (NI 14314), submitted during
cross-examination;

Exh.2030 (NI 14534), submitted during
cross-examination;

Cross-examination de Haas by prosecution, Prot.
Engl.p.12103-12115, German p.12288-12299;

and the following documents which were also sub-
mitted during cross-examination de Haas:

Exh.2322 (NI 15196);

Exh.2324 (NI 15199);

Exh. 2325 (NI 16000);

Exh.2326 (NI 14315);

Counter evidence:

Examination Jigner, Prot., Engl.p.9403-9408,
German p.9464-9470;

Cross-examination Dr.Krueger by defense, Prot.
Engl.p.2971-72, German p.2990-91;

Re-direct examination Jigner by defense, Prot.
Engl.p.9751-9760, German p.9880-9889;

Re-direct examination de Haas by defense, Prot.
Engl.p.12115-12126, German p.12299-12313;

Affidavit de Haas, Jigner, Exh.93, Doc.85, Book V,
p.56 (German);

Affidavit de Haas, Jigner Exh.94, Doc.86, Book V,
p.53;

Affidavit Boehol, Jigner Exh.95, Doc.87, Book V,
p.56;

Affidavit Mario Passargo, Jigner Exh.96, Doc.88,
Book V, p.62;

Affidavit Dachsen, Jigner Exh.97, Doc.89, Book V,
p.66;

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Affidavit Degener, Jigner Exh. 98, Doc. 121, Book V, p. 68;

Affidavit Schecht, Jigner Exh. 13, Doc. 13, Book I, p. 49;

Affidavit Mario Passarge, Jigner Exh. 50, Doc. 51, Book II, p. 84;

As demonstrated by the documents submitted by the defense, the Vereinigung Carl Schurz (VCS) engaged in anything but Nazi-propaganda in foreign countries. In the contrary, the entire effort of this association was directed towards cultivation and promotion of an understanding between the German and the American people. The VCS devoted itself to the welcome idea of exchange between students and professors of both countries, and still today the movie-picture of the Carl Schurz Journey 1934 is shown again (Jigner Doc. 86, Exh. 94, Book V). This fact alone proves that Nazi propaganda could not have been concerned. We refer the High Tribunal to the detailed affidavits by the business manager of the Vereinigung Carl Schurz, Emil de Haas (Jigner Exh. 93), which gives a clear picture about the activities and the purpose of the association. It was the intention of the President of this association, namely Dr. Jigner, not only to maintain the financial independence of the VCS, which was mainly achieved by contributions of firms which were interested in the American business, but also to follow a straight, neutral path as far as politics were concerned. The prosecution believes to be able to support its allegations by pointing out that also Nazi members had been in the Vorstand. Witness de Haas, business manager of the VCS for many years, replied upon being questioned by the prosecution, that up to the present day he had not known about the alleged - and in no way proven - offices which Dr. Draeger, the vice president of the VCS, is supposed to have held within the Party.

Furthermore, he has never noticed that the few members of the Vorstand belonging to the Party exerted any influence with Nazi tendencies upon the business management of the VCS.

The Prosecution has tried to mention the very limited payments which the VCS received from the culture-fund of the Foreign Office in connection with the Olympia Year 1936. These donations occurred because the VCS had taken over the care for the American Olympia Delegation which they would not have been able to afford on their own financial means. Furthermore, this culture-fund of the Foreign Office existed long before 1933 and served already at that time the purpose of a cultural approach. We think it is the practice of the cultural departments of the Ministries for Foreign Affairs in the entire world to show interest in work as performed by the VCS in the field of interstate understanding. Fortunately, a number of decent officials remained even after 1933 with the German Foreign Office, f.i., the gentlemen Freitag and Leitner, who had complete understanding for the strictly neutral attitude of such an association which was serving the purpose of understanding (between people).

Even the occasional payments by the Propaganda Council of German Economy to the VCS - two or three cases are concerned - are not suitable to support the devious presumptions of the Prosecution. If the VCS showed German industrial plants to American students and professors then it cannot be seen at all why the Propaganda Council of German Economy

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as qualified for the propaganda of German groups should not make any financial contributions to the VCS,

The prosecution has not shown evidence that the VCS at any time received and followed directives by national-socialist authorities which were directed towards Nazi propaganda in foreign countries. Much less was the prosecution in the position to show evidence that the VCS did engage in Nazi propaganda in foreign countries which should have served the purpose of preparing or conducting a war of aggression. Would the deductions of the prosecution be right it would not have been too difficult, most probably, to submit a statement to that effect by at least one of the thousands of foreign, especially American guests of the VCS. Nothing of this sort has happened. The evidence submitted by the prosecution as well as by the defense shows on the contrary, that the management of the VCS, and particularly Dr. Jigner as their president, always tried to keep the work of the VCS away from politics in order to serve hereby the idea of understanding between the two peoples. Only thus was it possible that the ex-president of the United States, Hoover, was solemnly received by the VCS (Vereinigung Carl Schurz) and that members of the American Embassy, including Ambassador Dodd, were among the visitors of the Vereinigung Carl Schurz. We are fully convinced that such high American officials never would have visited the Vereinigung Carl Schurz if it would have been an institute engaged in Nazi propaganda. We believe it unnecessary to discuss at this point the diary (Proc. Exh. 2031) which was published by the children of the late Ambassador Dodd and submitted in evidence by the prosecution, since

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this document lacks any probative value, which was so convincingly pointed outⁱⁿ the document itself by the former English Ambassador Henderson (see re-examination Jigner by defense, prot, Encl. page 9750-80 German p. 9087-9090). Since in this connection the prosecution also attacks the Press Department (later re-named "News Agency") of Farben Berlin NW 7, we quote the defense witness Mario Passarg, (Jigner-Exh. 50) for the question whether the press agency of Farben has engaged in national socialist- or antisemitic-propaganda in the United States: "... I should like to emphasize solemnly that is absolutely false".

8. Auslandsorganisation (A.O.):

(Proc. trial brief p. 56 and 93)

Charge:

The Prosecution believes to be able to hold the defendants responsible for the fact that the commercial committee of Farben decided upon a certain contact with the agencies of the foreign organization of the NSDAP. The prosecution particularly objects to the fact that only such gentlemen shall be sent to the foreign agencies of Farben who

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belonged to the German Labor Front, and that those were requested to attend the meetings of the local and state groups of the A.O. This allegedly proves a cooperation of Farber with the A.O. which obviously served the purpose of preparing and waging a war of aggression.

Proe. Evidence: Exh. 363 (NI 4959), Book 14, Encl.p.9, German p.11;
Exh. 379 (NI 2760), Book 14, Encl.p.117, German p.165;
Exh.378 (NI 4926), Book 14, Encl.p.109, German p.153;

Counter Evidence: Examination Jäger, transcript, Encl.p.9401-9417, German p.9470-9479;

Direct examination Dr.FRANK-PALLS by defense, transcript, Encl.p.9707, German p.9920;

Cross-examination Dr.FRANK-PALLS by defense, transcript, Encl.p.1067, German p.1084-85;

Direct examination Dr.OVERHOFF by defense, transcript, Encl.p.5764 seq., particularly 5766-7, and 5770, German p.5007 seq., particularly 5009 and 5013 (comments to Proe.Exhibit 563);

Cross-examination Dr.KRUGER by defense, transcript Encl.p.2983, German p.2999-3000 (Middle);

Affidavit Romens, Jäger Exh.176, Doc.176, Suppl.XI, page 25;

Affidavit Erich MUELLER, Jäger Exh.76, Doc.73, Book IV, page 93;

Letter from the Auslandorganisation, Jäger Exh.77, Doc.151, Book IV, page 94;

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Letter of the Central Finance Administration,
Jigner Exh. 70, Doc. 152, Book IV, p. 100;

Affidavit J. M. PISCOTE, Jigner Exh. 59, Doc. 55,
Book IV, p. 55 and 56;

Affidavit Burandt, Jigner Exh. 64, Doc. 61, Book IV,
p. 44 (Middle) - 45.

The evidence submitted by the defense show that the relations between Farben and the A.O. were always strained. Sometimes, the differences were so severe that Farben had to make every effort to come to an understanding with the A.O.. Farben did not want to break off relations completely because this would have had serious consequences for the export business. To what extent Farben, just as every other German Export firm, was dependent on the A.O. can f.i. be seen from the fact that after a certain date the granting of foreign exchange licenses by the Reich Ministry of Economics was subject to approval by the A.O. (transcript Encl. page 5705-06, German page 5751). Kommerzienrat WAIERL in Frankfurt was appointed to be the responsible person for maintaining the contact with the A.O. and to purify the atmosphere. (Testimony OVERHOFF, transcript, Encl. page 5755-57, German page 5700). If the Commercial Committee decided in this connection that the Farben's foreign representatives should be members of the A.O., a postulate was established which only looked like one. At this time all employees of the Farben, as well as the employees of all the other German Firms were already members of the German Labor Front which was the professional organization of the entire German Labor. The decision of the Commercial Committee therefore only confirmed this self-evident fact and every person who was informed about the German conditions prevailing at this time, knew

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that this was nothing else but "window dressing" (transcript, Exh. page 1967, German page 1954-55).

In the beginning, Jigner had no personal contact whatsoever with the A.O. He hardly visited any foreign representations of the A.O. during his big East Asia trip in 1934/35 a fact for which he was blamed by the A.O. Therefore, in 1936, on his South-America trip he adhered to the principle to get into contact with the heads of the A.O. abroad, in order to facilitate the practical work of our own Farben-representations in foreign countries and to settle any misunderstanding which might have come up. (Jigner Exhibits 58 and 64).

Thus, in several cases, Jewish Farben employees whose dismissal had been requested by the A.O. could keep their position through Dr. Jigner's intervention, since according to the explanations he gave to the A.O. they were indispensable to Farben's export business. This attitude of Dr. Jigner not only proves his personal fairness towards racial persecutions, but also his sound feelings concerning business. It was of great advantage for Farben and in the interest of business when our client succeeded in prejudicing the A.O.'s officials abroad in favor of Farben, by giving them little presents. (Jigner Exh. 176). Looking at these things from a natural point of view it would neither mean a cooperation with the A.O. nor had it anything to do with propaganda or war plans. Beyond that Dr. Jigner had no special contacts with the A.O., neither personally nor as chief of Farben Berlin NW 7. (Jigner Exh. 76) All the presumptions which the Prosecution has set forth with regard to this point

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have been refuted by the evidence, submitted by the Defense.

9. Dr. Jigmer's trip to the Far East and his report on the Far East.

(Pres. Trial brief page 67a)

Charge: The journey to the Far East and the report on the Far East allegedly have served the purpose to pass on to official and military agencies, material which was of interest to them.

Proe. Evidence: Exh. 762 (NI 1570), Book 40, Encl. p. 45-47
(Report on the Far East), German p. 54-59;
Exh. 861 (NI 8414), Book 47, Encl. p. 6, German p. 9;
Cross-examination Schiller by the Prosecution,
transcript, Encl. p. 13775-13776, German p. 14073-14075.

Counter-evidence: Examination Jigmer, transcript, Encl. p. 9417-9422,
German p. 9479-9484;
Re-direct examination Schiller by the Defense,
transcript, Encl. p. 13760, German p. 14077;
Affidavit von Tirpitz, Jigmer Exh. 113, Doc. 106,
Book VII, p. 1;
Excerpts from the Far East report Jigmer, Jigmer
Exh. 114, Doc. 107, Doc. Book VII, p. 7;

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Counter evidence:
(continued)

Affidavit Lammere, Jigner Exh. 115, Doc. 108,
Doc. Book VII, p. 36;

Affidavit Schiller, Jigner Exh. 116, Doc. 109,
Doc. Book VII, p. 37;

Trip

The actual motive for Dr. Jigner's East Asia ^{Trip} which lasted from August 1934 until June 1935 was the fact that "Jigner had been involved by the NSDAP in the train of events leading up to 30 June 1934 and Goheimrat GO-MIT considered it advisable for Dr. Jigner to stay abroad for a while". (Jigner Exhibit 116). Since no Vorstand member of the Farben had visited East Asia for a long time, Dr. Jigner was confronted with many unsolved problems concerning the Farben business. He mainly devoted himself to questions concerning the stabilization of currency-rates which particularly in East Asia were of considerable importance in view of the great export, and to the work at industrial projects. Especially in this connection he got in touch with the representatives of the big American and English firms and banks, for instance the Standard Oil Company of New Jersey, the I.C.I. (Imperial Chemical Industries), the National City Bank of New York and the Hongkong and Shanghai Banking Corporation.

The Prosecution obviously wants to connect this East Asia Journey with Dr. Jigner's alleged espionage activities. It did not submit any evidence for this charge. The documents, submitted by the Defense, show that this was not the case. The fact alone that Dr. Jigner surrounded himself with a staff of personnel which included five Jews who had emigrated from Germany

(Jäger Exhibit 116), shows the inconsistency of the Prosecution's deductions,

Jäger's report on East Asia which he, in part, drew up himself on the basis of his impressions and observations during this trip, and which he partly had written by somebody else, gave also rise to an erroneous inference by the Prosecution. The report is not based on any secret material whatsoever. Its importance rather rested in a comprehensive presentation of the economic situation of the East Asian countries. The report is in line with the English compilations, such as the China Year Book (Jäger Exh. 113) which should be referred to for comparison. The report on East Asia was mainly meant for inner-office use at Farben. In addition, German economic circles which were interested in transactions in East Asia received this report, as can be seen unequivocally from the distribution list which was submitted by the prosecution (Prosec. Exhibit No. 851). It cannot be considered as a reason for the least complaint in view of the fact that the material was accessible for everybody that further copies of the report were sent to some officials to whom Dr. Jäger was obliged for support which they had rendered to him during his trip, and whose information seemed to be desirable in the interest of the Farben transaction.

The Prosecution attaches particular significance to the circumstance that Hitler received a copy of the report. It has been cleared up in evidence that this fact is not due to Jäger's initiative but rather to the express wish of the chief of the Reich Chancellery, Dr. Lammers.

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(Jigner Exhibit 115). In view of the tendency of the East-Asia report, directed towards international economic cooperation, it would have been desirable if Hitler would have studied it most carefully. He could have learned plenty from it.

10. Mr. Jigner's South-American Journey:

(Pros. Trial Brief p. 58, 59 and 91)

Charge: That Mr. Jigner's South American Journey has served the purpose of important propaganda activities on behalf of Nazi Germany, also his activities in the Aufsichtsrat of "Transocean".

Pros. Evidence: Exh. 790 (NI 070), Book 44, Encl. p. 111, German p. 200;
Exh. 797 (NI 4054), Book 44, Encl. p. 137, German p. 243;
Exh. 798 (NI 8512), Book 44, Encl. p. 150, German p. 251;
Exh. 799 (NI 6126), Book 45, Encl. p. 1, German p. 1;
Exh. 796 (NI 7337), Book 44, Encl. p. 144, German p. 240;
Exh. 818 (NI 8293), Book 45, Encl. p. 140, German p. 105.

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Proe. Evidence
(continued)

Exh. 519 (NI 5751), Book 45, Encl. p. 141;
German p. 209;

Exh. 829 (NI 1327), Book 45, Encl. p. 143
German p. 207;

Exh. 830 (NI 5753) Book 45, Encl. p. 15,
German p. 31;

Exh. 377 (NI 5544), Book 17, Encl. p. 17,
German p. 24;

Exh. 804 (NI 10712), Book 45, Encl. p. 21,
German p. 50.

Counter evidence

Examination Jigner, transcript, Encl. p. 9423-29,
German p. 9404-81;

Examination Karsig in Mecklenburg by the defense,
transcript, Encl. p. 9706-07, German p. 9916-17;

Examination Dr. Frank-Jahle by the defense,
transcript, Encl. p. 9726-27 and 9790-99;
German p. 9927-29 and 9930-32

Affidavit Durandt, Jigner Exh. 110, Doc. 111,
Book VII, page 46;

Affidavit Fischer, Jigner Exh. 59, Doc. 56, Book
VII, p. 53;

Affidavit Schoene, Jigner Exh. 110, Doc. 112,
Book VII, p. 59;

Affidavit Schlotterer, Jigner Exh. 120, Doc. 113,
Book VII, p. 62;

Affidavit Meel, Jigner Exh. 175, Doc. 174, Book
XI, p. 16;

Affidavit Homan, Jigner Exh. 175, Doc. 175,
Book XI, p. 25;

Excerpt from the minutes of the working committee
on 13 April 1937, Jigner Exh. 121, Doc. 114, Book VII,
p. 63;

Affidavit M. Passarge, Jigner Exh. 51, Doc. 115,
Book II, p. 60

The trip to East Asia had shown how important it was for the Farben business to investigate on the spot the questions of securing rates of exchange as well as the questions of currency and industrialization. For this reason, Dr. Jigner, in the latter half of 1936, made trips to 16 South and Central American countries in order to devote his attention to the same problems there. That is why he visited the outstanding representatives of large American firms and banks in those countries, and frankly discussed with them the co-operation in questions of industrialization. He expressed his opinion f.i. to the effect that the United States were entitled to the first place in the economic field of South and Central America, by ordering the Farben branch offices to give preference to the National City Bank of New York in their bank transactions (Jigner Exhibit 59, 176, and 60) .

The prosecution believes that also this trip of Dr. Jigner's, can be connected with espionage activities. In this case, too, they do not furnish any proof. In the interest of throwing a clear light on the true circumstances, the defense, although not obliged to furnish proof on that subject, has presented the complete counter-evidence (Jigner, Exhibit 118, 119). Without anticipating our Final Plea, we furthermore point out in this connection that Dr. Jigner, in view of his disposition, could have hardly been a suitable person for espionage activities, the basic assumption of which is taciturnity and unobtrusiveness. We believe that the Tribunal gained the impression, during Dr. Jigner's examination on the witness stand, that a man with such a lively temperament is entirely unsuitable for any espionage activity.

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This fact has also been confirmed by witnesses who have known him for many years (Jigner Exh. 71, and Transcript, Excl. page 9724, German p. 9852).

The prosecution believes that they can show that Dr. Jigner, as a result of his trip to South America, established a program of "Defense against spreading an anti-German spirit in Latin America". This assertion is based on Pros. Exh. 790. The impossibility of this deduction is shown in the Prosecution Document itself. Concerned here is a letter from one of Dr. Jigner's colleagues by the name of Schwartz, to Geheimrat Benzler in the Foreign Office, the wording of which shows that the subject matter which the Prosecution has quoted does not originate with Dr. Jigner or Farben, but with the German Foreign Office. The letter furthermore shows that it is a defense against U.S. propaganda against Germany's economic position in South America. This was a question which particularly affected Farben's economic interest as the biggest German export firm. It is therefore quite obvious that Farben complied with the wish of the Foreign Office to give their opinion concerning these questions from their own experience. The suggestions which are contained in the letter to Geheimrat Benzler are not of a political but of an economic and cultural nature. For the rest the basic idea underlying the letter from Herr Schwartz, which is expressed in the very beginning of the letter, is that the creation of a relation of understanding between Germany and the United States should be the starting point of all considerations. Dr. Jigner saw the letter here in Nuernberg for the first time.

Closing Brief Jäger

What the suggestions in this letter which were in no way implemented by the Foreign Office, are supposed to have to do with the planning, preparation, or waging of aggressive wars, is entirely unintelligible.

In this connection the Prosecution charges the defendants with having made monetary subsidies to hospitals, Boards of Trade, etc. Dr. Jäger during his examination on the witness stand (Transcript Encl. page 9427, German page 9489) has clearly defined the reasons for these donations. Since, for instance, the hospitals were wholesale purchasers of Bayer chemicals and since the Boards of Trade intervened officially in the promotion of exports, these payments were in the immediate interest of Farben's export business.

The Prosecution also attaches an erroneous significance to Dr. Jäger's membership in the Aufsichtsrat of the "Transocean". Dr. Jäger became a member of the Aufsichtsrat of the "Transocean" in 1943 only. (Transcript, Encl. page 9470 - 71, German page 9532). For this very reason no connection whatsoever can exist with the alleged events in 1935/37, as the prosecution tries to show on page 50 of its Trial Brief. For the rest, Dr. Jäger, even during his membership period in the Aufsichtsrat, was never concerned with the business activities of the "Transocean" (Jäger Exhibit 51).

Thermann's file note concerning the discussion with the German ambassador in Argentina which were held in Berlin (Proc. Exh. 804) was explained in detail by the witness Dr. Frank-Fahle (Transcript Encl. page 9789-9800, German page 9830-32). It has been proven in this testimony that the subject of the discussion was a genuine business interest on the part of Farben.

Closing Brief Jensen

If Herr von Thiermann did make statements concerning the political situation in individual South American countries this was done because such information was of considerable importance for Farben. It has been expressed several times during this trial that, particularly in times of war, it is imperative to know as exactly as possible the political situation of those countries in which capital is invested, in order to avoid wrong business decisions. We are unable to see what the fact that Herr von Thiermann's obtained information ⁱⁿ Berlin is supposed to have to do with an independent political activity in Argentina on the part of Farben, as is claimed on Page 89 of the Prosecution's Trial Brief. This cannot be considered anymore to be a wrong deduction, but a free invention (by the prosecution).

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II. Book gifts South America:

Charge: Dr. ILGNER allegedly did Nazi propaganda work by sending Nazi Party literature to South America.

Evidence offered by Prosecution: Exh. 791 (NI 3787), Book 44, English P.116, German P.206.

Counter-Evidence: ILGNER Interrogation, Transcript, Engl.P.9429-31, German P.9491-94;

Direct examination of Dr. Frank-Wahle through Defense, Transcript, Engl.P.9797-9798, German P.9929;

Correspondence and book lists, ILGNER Exh. 122, Dec.116, Book VII, P. 67;

Book list, ILGNER Exh.123, Dec.117, Book VII, P.89;

Affidavit Dr. HACKENJAHN, ILGNER Exh. 124, Dec.118, Book VII, P.93;

Affidavit HUBERS, ILGNER Exh.60, Dec.57, Book IV, P.31;

Affidavit HOLLAND, ILGNER Exh.176, Dec.176, Book XI, P.29.

According to his custom, Dr. ILGNER acknowledged the hospitality shown to him during his South America trip by small gifts, such as books, cameras and such like. That among those books given away during those trips there was no Nazi literature.

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can clearly be seen from the many letters of friends to Dr. ILGNER which have been submitted to the Court in the ILGNER Exh. 122.

The various institutions with whose chiefs Dr. ILGNER had become acquainted during his South America trip expressed wishes on their part to have books sent in order to supplement their libraries. Lists of requests were sent to Dr. ILGNER to Berlin. That the various offices of the A.O. (Foreign Organisation) that also expressed requests, mainly wanted Party literature is as natural as the fact that Dr. ILGNER could not send those people books by Jewish authors. By selecting, from a greater number of book lists, only such lists which concerned parcels of books to the A.O., the Prosecution has tried to give the impression that Dr. ILGNER distributed party literature exclusively and to an enormous extent. The documents submitted by the Defense (ILGNER Exh. 122 and 123) show unequivocally that the shipments to the A.O. constituted only a slight part of the whole of the shipments and that the shipments which were addressed to South American Cultural Institutions contain no, or practically no, Party literature. How it came about that isolated books which might be classified as Party literature had to be added has been explained convincingly by the affiant HACKEMANN, who was in charge of this matter at that time (ILGNER Exh. 124). The shipping of the books was not possible without consultation with the "Deutsch-Auslaendische Buchtausch" (German and Foreign Book Exchange) which had to consider that

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the book lists had to be submitted to the A.O. for approval before they were sent away.

12. Central Office "Joy and Work":

(Proc. Trial Brief P.59)

<u>Charge:</u>	This office was to carry through a "propaganda campaign" in Central America with the help of the Farben Verbindungsblätter.
<u>Evidence offered by Prosecution:</u>	Exh. 807 (NI 2786), Book 45, Engl. P. 47, German P. 65; cross-examination Dr. HACKEMANN through the Prosecution, Transcript, English P. 13739-48, German P. 14037-48.
<u>Counter-Evidence:</u>	Re-direct examination of Dr. HACKEMANN through the Defense, Transc. Engl. P. 13748-51, German P. 14045-48; Affidavit Dr. HACKEMANN, ILGNER Exh. 125, Doc. 158, Book VII, P. 96.

The affiant HACKEMANN who was at that time in charge of this matter at Farben and who has also written the file notice (Proc. Exh. 807), has clarified the whole affair. Farben learned of the plans of the International Central Office "Joy and Work" for the first time through his attending a meeting of the 13 April 1938, which attendance had been requested by official agencies. The suggestions

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concerning the expansion of the propaganda work of the office discussed at the meeting were never carried out as far as the inclusion of Farben or Verbindungsmänner were concerned since Farben was opposed to it from the beginning. Not only did Farben show no initiative in this matter but the execution of the plans of the Central Office "Joy and Work" was in part wrecked.

13. Zoffi-Vertrauensmänner and Farben-Verbindungsmänner:

(Proc. Trial Brief 1.58, 68 and 93).
(Para. 65 of the Indictment)

Charge:

It was allegedly a function of the Farben-Verbindungsmänner to do "fifth Column work" abroad. That is why they also allegedly held leading positions in the A.O.

Evidence offered: Exh. 772 (NI 8702), Book 17, Engl. P.33, German P.43;

Exh. 773 (NI 8701), Book 17, Engl. P.33, German P.54;

Exh. 363 (NI 4927), Book 46, Engl. P.82, German P.123;

Exh. 363, (NI 4959), Book 45, Engl. P.5, German P.7;

Exh. 806 (NI 10575), Book 45, Engl. P.98, German P.182;

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Evidence offered
by the Prosecution:
(cont'd)

Exh. 806 (NI 10555), Book 45, Engl.
P.30, German P.51;

Exh. 914 (NI 10922), Book 49, Engl.
P.50, German P.71;

Exh. 898 (NI 7081), Book 48, Engl.
P.133, German P.191;

In addition: Exhibits 901-912,
Book 49 (Excerpts from reports
of Farben-Verbindungsnummer)

Counter-Evidence:

Interrogation ILGNER, Transcript,
Engl.P.9465-69, German I.9577-81;

Cross-Examination Dr. Frank-Fahle
through Defense, Transcript, Engl.
P.1955, German P.1943;

Direct examination of Dr. OVERHOFF
through Defense, Transcript, Engl.
P.5963, 5964, 5966, 5772, 5775,
5778, 5781-82, German I.5804,
5805, 5807, 5315, 5818, 5821-22,
5824,
and Engl.P.5808-09, German P.
5852-53.

Cross Examination BANNERT through
Defense, Transcript, Engl.I.3060-
62, German I.3081-82;

Affidavit SAXER, ILGNER Exh.57,
Doc.55, Book IV, P.6;

Letter of Farben to FISCHER, Mo-
xico, ILGNER Exh.58, Doc.102,
Book IV, P.19;

Affidavit FISCHER, ILGNER Exh.
59, Doc.56, Book IV, P.22;

Affidavit HAMERS, ILGNER Exh.60,
Doc.57, Book IV, P.20;

Affidavit KLUPPE, ILGNER Exh.61,
Doc.58, Book IV, P.33;

Affidavit KVENILD, ILGNER Exh.
62, Doc.59, Book IV, P.35;

Affidavit GADOW, ILGNER Exh.63,
Doc.60, Book IV, P.39;

Affidavit BURANDT, ILGNER Exh.
64, Doc.61, Book IV, P.43;

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Affidavit MULL, ILGNER Exhibit 175, Doc. 174,
Book XI, P. 16;

Affidavit HUMANN, ILGNER Exh. 176, Doc. 175, Book
XI, P. 25;

Affidavit Dr. HAAS, ILGNER Exhibit 177, Doc.
176, Book XI, P. 33;

Affidavit Dr. HACHEMANN, ILGNER Exh. 185, Doc.
186, Book VII, P. 100;

Report of Farben-Verbindungsraum Paraguay, ILG-
NER Exh. 65, Doc. 62, Book IV, P. 47;

Affidavit von LEWINSKI, ILGNER Exh. 66, Doc. 63,
Book IV, P. 54;

Excerpt from book "Rosa Rubber" by Frank HOWARD,
ILGNER Exh. 67, Doc. 64, Book IV, P. 56;

Affidavit von HESTIG, ILGNER Exh. 178, Doc. 177,
Book XI, P. 42.

The Zeffi-Vertrauensmänner institution was created in 1931/
32. Its function was to support the Central Finance Administration
of Farben in the execution of compensation transactions, currency
transactions, credit negotiations, etc. The observation
of the currency situation, and coverage of it, also came
under this heading as a matter of course. It was thus
an institution that had originated in the period before 1933
and its necessity, on one hand, resulted from the world economical
crisis and, on the other hand, from the special conditions
obtaining in the Farben export business (ILGNER Exhibit 57).

The tendencies toward increasing industrialization prevailing
all over the world caused the commercial committee in 1937
to extend the functions of the Zeffi-Vertrauensmänner and to
pay them

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increased attention (Proc. Exh. 352). This gave rise to the institution of the Farben-Verbindungsmann which was patterned on the supervisors of the great American and English concerns. The most representative of the Farben agents in the country concerned with the widest experience would be appointed Farben Verbindungsmann. Main function of the Farben-Verbindungsmann remained the sales. There can be no question of a Farben Verbindungsmann system stretching all over the world, since in many countries (for instance USA, England, Russia, Holland, Belgium, Czechoslovakia, Greece, Turkey, Switzerland) no Farben-Verbindungsmann were appointed. Only part of the Farben Verbindungsmann were Reich Germans; about 30 % of the Farben Verbindungsmann, their deputies and assistants were foreigners. Membership in the NSDAP played no part in their selection; it is known, on the contrary, that many were pronounced opponents of the Party (ILGNER Exhibits 59, 60 and 177). In contradistinction to the claims of the Prosecution only about 11 % of the Farben Verbindungsmann, deputies and assistants held an office in the A.O. (ILGNER Exhibit 57).

The Prosecution, likewise, puts a wrong complexion upon the reports of the Farben Verbindungsmann. It wants to make them appear as a proof of espionage work done by the Farben Verbindungsmann. In each of the exhibits 901-912 introduced by it, it has given only a short excerpt from isolated reports. But, even these excerpts do not support its thesis in any single case apart from the fact that

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these quotations give a wrong impression of the purpose and the real contents of these reports. The Defense has presented, as ILGNER Exhibit 55, a complete report of the Farben Verbindungs-mann from Paraguay of October 1940 in order to show the Court what such reports used to look like. The affidavits of Farben Verbindungs-männer submitted by the Defense all agree that the reports were based on newspaper notices, magazine articles, statistical publications, in short on material that was available for everyone in the country in question.

Everything the reports contained was of importance for Farben's commercial dispositions. It is a matter of course that certain references to the political situation in the country reported on were contained in them, since knowledge of the political situation, especially in troubled times, was an indispensable prerequisite for many commercial decisions, especially in the case of major investments (ILGNER Exhibits 57 and 63).

Dr. HAAS's report introduced by the Prosecution as Exhibit 698 was not a report of a Farben Verbindungs-mann. It was written on his own initiative and was not due to any suggestion either by Farben or by the Farben Verbindungs-mann. Dr. HAAS who belonged to the political persecutees and who, with the knowledge of the Farben Verbindungs-mann, displayed anti-National-Socialist activities in China has stated in his affidavit (ILGNER Exhibit 177) that it was his concern about the political development in the Eastern Asiatic space which caused him to write his reports. These reports were so defeatist that

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Dr. HAAS was sharply attacked on account of them by National-Socialist circles in China and had to discontinue them for that reason.

Under the Exhibit numbers 806, 808 and 914, the Prosecution has introduced reports of American and Argentine offices dealing with alleged espionage activities of Farben and Farben Verbindungs-mannern. These reports do not conform with the rules for a fair trial. They must be considered as one-sided claims, as the other side was given no opportunity to take issue with the charges raised. If, however, a fundamental principle such as "audiatur et altera pars" is violated, such a document cannot be said to have any probative value. Moreover, the assertions made in these documents concerning the Farben Verbindungs-mannern for Argentine are clearly refuted by the affidavits MOLL and ROMANE (ILGNER Exhibits 175 and 176). The proceedings carried through against the two men after the end of the war before Argentine authorities have shown that the charges raised against them were unfounded.

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14. Nial Weeks:

(Iros. Trial Brief P.61 and 100-101)

Charge: Farben allegedly invited prominent foreigners to Germany in order to discuss, in conjunction with the Reich Government, matters concerning foreign policies with them. The purpose was to get to know the opinions of the businessmen and, on the other hand, to convince the foreigners of the sincerity of the German program.

Evidence: Exh. 779 (NI 826), Book 44, Engl.P.59, German offered by P.74;

the Prosecution:

Exh. 2036 (NI 1556) submitted during the cross-examination of Dr. ILGNER;

Re-direct examination KUEBGER through the Prosecution, Transcript, Engl.P.3013-15, German P.3034-35;

Cross-examination Frank-Fahle through the Prosecution, Transcript, Engl.P.9823-25, German P.9956-59.

Counter- Interrogation ILGNER, Transcript, Engl.P.9474-
evidence: 60, German P.9583-88;

Direct examination of the Duke of Mecklenburg through the Defense, Transcript, Engl.P.9777-81, German P.9907-11;

Direct examination of Dr. Frank-Fahle through the Defense, Transcript, Engl.P.9806-08, German P.9938-41;

Re-Cross-Examination of Dr. KUEBGER, Transcript, Engl.P.3021-3025, German P.3042-45;

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Affidavit Gladisch, Jigner Exh. 82, Doc. 76, Book V, p. 1;
Affidavit Lindemann, Jigner Exh. 83, Doc. 77, Book V, p. 5;
Affidavit Wenger, Jigner Exh. 84, Doc. 78, Book V, p. 7;
Affidavit Baidre, Jigner Exh. 85, Doc. 153, Book V, p. 9;
Affidavit von Wilnowsky, Jigner Exh. 86, Doc. 79, Book V, p. 12;
Affidavit Schacht, Jigner Exh. 13, Doc. 13, Book V, p. 14;
Affidavit Buschner, Jigner Exh. 87, Doc. 80, Book V, p. 17;
Affidavit Weissecker, Jigner Exh. 180, Doc. 178, Book XI, p. 48;
Address Frodoehl, Jigner Exh. 88, Doc. 81, Book V, p. 19,
Excerpt from MAC report, Jigner Exh. 89, Doc. 120, Book V, p. 23.

Already before 1933, Dr. Jigner made efforts to arrange meetings which had as their purpose the promotion of common discussions between German and foreign economists (transcript Exh. p. 9777, German p. 9907). He expected of such oral discussions of economic problems a deepening of the mutual understanding. Spurred on by the successes obtained, he sought, also after 1933, for opportunities to arrange more such meetings. Thus it came to the various meetings held on the occasion of the "Kiel Weeks". The Prosecution presumes that the Kiel Weeks, specially in the years 1928 and 1939, served espionage and Nazi propaganda purposes. The statements

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introduced by the Defense of foreign and German affiliates, show that all these participants reject this allegation of the Prosecution with indignation and have seen in the meetings but what they really were: a means to further economical cooperation and reconciliation amongst nations (Jlgner Exh. 84, 85, 86 and 87). The same can be shown from the letters of thanks of foreign participants of the "Kiel Weeks" of 1939, contained in Exhibit 779.

The Prosecution takes exception to the fact that at the meeting of 1939 matters concerning foreign affairs were discussed by the participants. The witness Frank-Fahle has stated (Transcript, Engl. p. 9806-07, German p. 9938-39) that a discussion on the subject, beside the actual economic conversations, was a necessary result of the situation then prevailing in the sphere of foreign policy. The extraordinary gravity of the foreign situation was expressed in these conversations. This was the real reason why we caused a report on the course of these discussions to be made and forwarded to official agencies through the president of the Reich Economy Chamber, Pietzsch, hoping that these agencies would recognize from it the real mood of the foreign countries and would take due notice of it (Jlgner Exh. 89). The warnings contained in this report testify to the great sense of responsibility that animated the German participants and prove the contrary of what the Prosecution would like to read into the report.

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Apart from this, Dr. Jlgner did not take part in the "1939-Kiel-Venk", at all as he had been ill at that time for many months. (Jlgner Exh. 187, Doc. 184, Book XI, page 70).

15. Surrender of Foreign Exchange:

(Proc. Trial Brief page 61/62)

Charge: By supplying large amounts of foreign exchange Farben allegedly supported official propaganda abroad and made an important contribution to the realization of the Nazi war plans.

Evidence offered

by the Prosecution: Exh. 825 (NI 950), Book 46, Encl. p. 1, Germ. p. 1;
Exh. 826 (NI 1104), Book 46, Encl. p. 3, Germ. p. 3;
Exh. 828 (NI 988), Book 46, Encl. p. 11, Germ. p. 15;
Exh. 823 (NI 11196), Book 46, Encl. p. 179,
Germ. p. 342;

Cross-Examination Gadow through the Prosecution, transcript, Encl. p. 13273-13284,
Germ. p. 13480-13489;

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Counter Evidence:

Interrogation Jigner, transcript, Engl.p.9481-82, Germ.p.9693-94;

Cross-Examination Frank-Fahle, through the Defense, transcript, Engl.p.1995-96, Germ.p.1985-86;

Re-direct-Examination Gadow through the Defense, transcript, Engl.p.13389-90, Germ.p.13496;

Affidavit Schlotterer, Jigner Exh.74, Doc.73, Book IV, p.104;

Affidavit Helfert, Jigner Exh.80, Doc.74, Book IV, p.106;

Affidavit Gadow, Jigner Exh.81, Doc.75, Book IV, p.109

According to German foreign exchange laws no firm could freely dispose of its assets and claims abroad. These had to be offered and surrendered to the German Reich Bank, on the contrary. The German Reich alone was entitled to dispose of them. (Transcript Engl.p.1998, German p.1986). Within the framework of this general surrender duty, the exchange offices made the German firms certain impositions as to the mode of surrender. The German firms had to comply with these orders (Jigner Exh.79). Thus, Farben, f.i., like other German export firms, received in some cases the imposition by the Reich Ministry for Economics to comply with the surrender duty not by passing the amounts of foreign exchange to the Reich Bank but by paying them to German diplomatic representations abroad. This constituted for the paying firm nothing but a modification of the ways and means in which it had to fulfill its legally prescribed surrender duty. As in any other case of surrendered foreign exchange, the equivalent of the amount of foreign exchange was put by the Reich Bank to the credit of the German firm in Germany in question (Jigner Exhibit 79).

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The Prosecution claims that Farben knew the purpose for which in individual cases the foreign ~~money~~ ^{supplied to the German diplomatic} missions was used. Dr. SCHLOTTMAN, the referent in the Reich Ministry of Economics who was responsible at that time for the issuance of the payment orders, as well as Herr Helfert, who was Farben's man in charge, have testified unanimously that the ultimate purpose of these payments was never made known to Farben nor to any other firm. (Jigner Exhibit 79 and 80). The Prosecution believes that it can deduce this knowledge from its Exhibits 825, 826 and 828. The affiant HELFERT cited above justly points out in his affidavit (Exhibit 80) that this Prosecution document concerns internal telegrams which never came to the knowledge of Farben. The Prosecution, in this connection, also refers to the report of a Mr. REDIGER (Exhibit 823). Though this report is limited to assumptions and conclusions, the Defense has taken the pains to clarify matters in this case, too. Reference is made to Jigner Exhibit 81 which has been completely confirmed in the cross-examination of the affiant through the Prosecution (Transcript, Engl. p. 13272-13284, German p. 13480-13489).

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16. Alleged espionage activity of the
Economic Department (Vow)

(Proc. Trial Brief pages 63 and 64).

Charge

Defendants are alleged to have, voluntarily and on their own initiative, supplied the Reich agencies with material which is supposed to have been of great importance for the planning, preparation and carrying out of aggressive war. Vow especially is alleged to have regularly supplied the Reich agencies with important material concerning foreign countries by the observation of economical trends and world markets.

Evidence offered

by the Prosecution:

Exh. 377 (NI 5544), Book 17, Engl.p.15,
Germ.p.5;

Exh. 850 (NI 8149), Book 47, Engl.p.1,
Germ.p.1;

Exh. 852 (NI 5760), Book 47, Engl.p.9,
Germ.p.28;

Exh. 846 (NI 7987), Book 46, Engl.p.126,
Germ.p.144;

Exh. 853 (NI 7787) Book 47, Engl.p.39,
Germ.p.75;

Exh. 859 (NI 7786), Book 47, Engl.p.40,
Germ.p.76;

Exh. 852 (NI 7791) Book 47, Engl.p.66,
Germ.p.107;

Exh. 853 (NI 7790), Book 47, Engl.p.68,
Germ.p.109;

Cross-Examination Weithinger through the
Prosecution, transcript Engl. pages 12911-12921,
Germ. pages 13113-13121

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Counter Evidence

Interrogation Jlgner, Transcript, Engl.p.9487-93, 9495-9499, Germ.p.9599-9606, 9607-9611;

Direct examination Frank-Fahle by the Defense, transcript, Engl.p.9810-9812, Germ.p.9943-9944;

Cross-examination Bennert through the Defense, transcript, Engl.p.3062,3064-3066, Germ.p.3082, 3084-3086;

Re-direct-examination Reithinger through the Defense, transcript, Engl.p.12946-12949, Germ. p.13148-13151;

Affidavit Reithinger, Jlgner Exh.37, Doc.34, Book II, p.24;

Affidavit Richter, Jlgner Exh.39, Doc.36, Book II, p.33;

Affidavit Gross, Jlgner Exh.40, Doc.37, Book II, p.42;

Affidavit Ritter, Jlgner Exh.18, Doc.18, Book II, p.49;

Affidavit Reithinger, Jlgner Exh.44, Doc.41, Book II, p.67;

Affidavit Reithinger, Jlgner Exh.45, Doc.43, Book II, p.70;

Minutes of the Working Committee, Jlgner Exh.36, Doc.49, Book II, P.21;

Decree concerning the information requirement, Jlgner Exh.43, Doc.40, Book II, p.63;

Lists of the Vowi studies, Jlgner Exh.52, Doc.44, Book III, p.1, and Jlgner Exh.53, Doc.45, Book III, p.55.

The setting-up of the Vowi goes back far into the time before 1933. As for the big foreign enterprises, it proved necessary for Farben's world-wide business to have market analyses made, to carry out market research, etc.,

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in order to be able to make in time the necessary commercial arrangements (Jigner Exh. 36). Due to the highly qualified staff of assistants and especially due to the guidance by the internationally recognized expert, Prof. von MUELLERBACH, Vowi very quickly rose to become an institute of high scientific rank. Like all such institutions it entertained continuous exchange of ideas and material with the corresponding organizations inside and outside Germany, as for instance with the National Conference Board, the economical departments of the National City Bank of New York and the I.O.I., London, (Jigner Exhibit 45).

That the work of the Vowi was of great practical value for the Farben business was shown for instance by the forecast that the US-dollars would be devalued, which conclusion had been reached by the Vowi research. The suggestions in connection with this forecast made by Dr. Jigner for Farben saved Farben losses which without these measures would have amounted to many millions. (transcript Engl. pages 9492, 9768 and 3054-55, German pages 9604, 9897-98, 3075).

The affidavit of the Vowi employee Richter submitted by the Defense under Exhibit 39 cites some more examples culled out of the wealth of material. As for the rest, we refer the Court to the Jigner Document Book III (Jigner Exhibits 52 and 53) which lists the titles of all Vowi studies still available at Leverkusen and Gruesheim and which gives a plastic picture of the subjects dealt with by Vowi.

The head of the Vowi, of many years standing, Dr. Reithinger, has added in some greater detail during his interrogation (transcript Engl. p. 12942 and 12950-51, German p. 13142 and 13154) that Vowi never

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made political prognostics but restricted itself to economical discussions.

It is a matter of course that, in view of the variety of the Farben business and the scientific penetration of the material, such knowledge as accrued to Vowi might also interest other firms, scientific institutes and official agencies. In order to ensure that Vowi was supplied with the statistical data and other documents required by it to the most ample extent possible, Dr. Jlgner, from the outset, pursued the policy of placing at the disposal of private persons and official agencies that made their wishes known, the economical studies prepared by Vowi. The Vowi studies not being secret, anybody who was interest in them could consult them and make scientific studies on the Vowi's premises and use the material extant there. (Jlgner Exhibit 42, transcript Engl.p.3159, 3165-3166, Germ.p.3181, 3186-87).

The Prosecution has made the assertion that the Vowi reports were regularly forwarded to the Reich authorities. In support of its assertion it relies upon the affidavit of Dr. Jlgner (Exhibit 377) and the affidavit of Dr. Bannert (Exhibit 850). Both, however, merely show that the Vowi studies were held in high esteem by official agencies and were only placed at their disposal when they asked for them. The affiant Bannert has interpreted his affidavit under cross-examination through the Defense as to mean this in a way which precludes any doubt (transcript Engl.p.3069, Germ.p.3080).

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The immediate cause for the setting-up of the Viennese branch of the Vowi was the charge made against Germany by the Austrian economic circles that everything was centering round Berlin. Austrian economic circles requested that Farben should make a start with the organizational decentralization in the economic sphere. This organization proved to be necessary for Farben in order to be able to supply the firms belonging to it, or affiliated to it, with the economic material required for their work (Jigner Exhibit 40). The Prosecution particularly takes exception to a letter of the Head of the Vienna Vowi branch which it has introduced as Exhibit 846. That these statements were not approved of by the management of Farben Berlin NW 7 can be seen on the last two pages of the Prosecution document itself. For what reasons the Viennese Vowi branch had contacts with ^{the} military area inspector for Vienna, General Gauthier, can be seen from Jigner Exhibit 44. General Gauthier received a number of Vowi studies at his request. They were not at all secret, nor were the other studies secret. The only exception is the report on "Impression from a Voyage in Russia" contained in the Prosecution document Exhibit 883. This report, however, was highly confidential for quite different reasons from what the Prosecution assumes. The statements contained in it about conditions in Russia ran counter to the official Nazi opinions to such an extent that it could only be handed over to people who were known to be opposed to the Party. Among these people was General Gauthier who

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was later dismissed from the Wehrmacht in connection with the events of 20 July 1944 (Jlager Exhibit 44).

The sum of the evidence submitted as described above leaves no room for the allegation of the Prosecution that Vowi had been founded and utilized for espionage purposes. The Defense has submitted affidavits from a number of people inside and outside of Farben who were in close contacts with Vowi. They testified without exception that they were never given, or never heard of assignments, which bore the most distant relationship to something like espionage. (Jlager Exhibits 37, 39, 40, 18, and 42).

17. Chemycal
(Proc. Trial Brief page 63)

Charge: The firm of Chemycal Inc. New York, was allegedly used by Farben to procure espionage material from USA.

Evidence offered
by the Prosecution: Exh. 888 (NI 11197), Book 48, Engl. p. 36,
Germ. p. 40;
Exh. 886 (NI 11345), Book 48, Engl. p. 34,
Germ. p. 38;
Exh. 887 (NI 10423), Book 48, Engl. p. 35,
Germ. p. 39;

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Exh. 872
(continued)

Exh. 872 (NI 7581), Book 47, Encl. page 92,
German page 168;

Exh. 873 (NI 11198), Book 47, Encl. page 101,
German page 175;

Exh. 875 (NI 10677), Book 47, Encl. page 103,
German page 181;

Exh. 876 (NI 10418), Book 47, Encl. page 138,
German page 204;

Exh. 877 (NI 7673), Book 48, Encl. page 1,
German page 1;

Exh. 377 (NI 6544), Book 17, Encl. page 15,
German page 34;

Exh. 2336 (NI 8647), submitted at the cross-
examination Dr. Reithinger by the prosecution;

Cross-examination Dr. Reithinger by the Prosec-
ution, Transcript, (Encl. p. 13925-13927, German
p. 13127-13129).

Counter Evidence: Interrogation Ilmer, Transcript, Encl. p. 9493-95,
German p. 9894-97;

Interrogation Dr. Frank-Juile by the Defense,
Transcript, Encl. p. 9800-9810, German p. 9541-43;

Affidavit Reithinger, Ilmer Exh. 38, Doc. 35,
Book II, page 31,

Interrogation for Meier by the Defense,
Transcript, Encl. p. 7104-06, German p. 7155-57;

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Chemnyco was a firm with whose help Farben kept contacts in the technical sphere with big USA firms, for instance, the Standard Oil Company of New Jersey and others. The tasks and the organization of Chemnyco can be seen in greater detail from the Prosecution document Exhibit 888. The only department of this firm with which Vowi had any contacts was the statistical department. It served in the first place the purpose of Chemnyco itself in the economical and statistical spheres and carried on, moreover, an exchange of ideas and material with Vowi as with other similar institutes.

The suspicion of the Prosecution as to espionage activities is completely unfounded in this case, too. The two exhibits No. 876 and 877 introduced by it are not of a nature to justify this charge. The first is a list of newspapers and magazines ^{received} by Chemnyco in 1941 and the other is a list of letters of Chemnyco to Vowi to which economical material had been attached. These documents show at first glance that, as a rule, these were publications which were generally accessible.

As the affiant Dr. Reithinger has rightly stated the idea of a publication is that it should be given as wide a publication as possible (Ilgner Exhibit 38). What this is to do with espionage cannot be seen at all.

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The Prosecution evidently judges its position in this case to be weak itself. Otherwise there would be no explanation for its resorting to such doubtful means as the introduction of exhibits 886 and 887. What the existence of maps such as the "West Indian Islands" and the "Surroundings of the Panama Canal" in the files of Chernyco is supposed to have to do with the alleged espionage activity of Farben, the Prosecution takes good care not to explain.

A moment's reflection, based on its own material, should have guarded the Prosecution against pursuing its wrong course. If Farben had carried on espionage activity for the German Reich by means of Chernyco they would not have had to fight with the German authorities for being given enough foreign currency to maintain their relationship to Chernyco in 1940 and the importance of the statistical department would not have been dealt with on two and a half lines in the application comprising six pages which has been introduced as Pros. Exhibit 888.

Moreover, Dr. ter Meer (transcript Engl. page 7105, German page 7156) has testified that the Dupont firm had a company in London which was similar to Chernyco. Its function was, beside its duties in the technical field, "to gather information on the development of the chemical industry in the whole of Europe". This had as little to do with espionage as the activity of Chernyco.

18. Relations between Vowi and the
Wirtschaftsausschuss.

(Proc. Trial Brief page 85/86)

Charges

"It is alleged that during the six months before the outbreak of war with Poland Vowi displayed special activity in the procurement of information for the Wehrmacht, that led, on 25 August 1939, to an agreement with the Wirtschaftsausschuss in which Vowi agreed to leave its material and personnel to the Wehrmacht, and that Vowi prepared, during the war, a "continuous flow of important military and economical reports for the Wehrmacht including positional charts for bomb targets".

Evidence offered by
the Prosecution:

Exh. 860 (NI-7493), Book 47, Engl. p. 51,
German page 87;

Exh. 861 (NI-8649), Book 47, Engl. page 65,
German page 106;

Exh. 843 (NI-4875), Book 46, Engl. page 99,
German page 117;

Exh. 850 (NI-8149), Book 47, Engl. page 1,
German page 1;

Exh. 857 (NI-5652), Book 47, Engl. page 37,
German page 71;

Exh. 853 (NI-9827) Book 47, Engl. page 11,
German page 41;

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Evidence offered by
the Prosecution:
- (cont'd) -

Exh. 857 (NI-7850), Book 47, Engl. page 74,
German page 144;

Exh. 867 (NI-9959), Book 47, Engl. page 58,
German page 150;

Exh. 869 (NI-7794), Book 47, Engl. page 80,
German page 151;

Exh. 870 (NI-7857), Book 47, Engl. page 86,
German page 162;

Exh. 871 (NI-7778), Book 47, Engl. page 88,
German page 163;

Examination Ruessmann through the Prosecu-
tion, transcript Engl. page 3147 - 50, German
page 3158-70;

Re-direct examination Reithinger through
the Prosecution, transcript Engl. page 3161-
63, German page 3166 - 87;

Cross-examination Reithinger through the
Prosecution, transcript Engl. pages 12928 -
12934, German page 13129 - 13132.

Counter-Evidence:

Examination Ilgner, transcript Engl. pages
9491 - 95, German pages 9603 - 06;

Cross-examination Dr. Bennett through the
Defense, transcript Engl. pages 3058-59,
3062 and 3064; German pages 3078 - 79, 3082
and 3084;

Cross-examination Reithinger through the
Defense, transcript Engl. pages 3156 - 62,
German pages 3177 - 85;

Cross-examination Dr. Rupp through the Defense,
transcript Engl. pages 2936 - 40, German
pages 2957 - 60;

Cross-examination Dr. Reithinger through the
Defense, transcript Engl. pages 12949 - 12950,
German pages 13151 - 52;

Cross-examination Ruessmann through the
Defense, transcript Engl. pages 3150 - 3151,
German pages 3170 - 71;

Affidavit Dr. Reithinger, Ilgner Exh. 41,
Doc. 38, Book II, page 55;

Affidavit Baier, Ilgner Exh. 42, Doc. 39,
Book II, page 60;

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Counter-Evidence
(cont'd)

Affidavit Fernau, Ilgner Exh. 17A, Doc. 173,
Book II, page 11;

Ordinance on the Information Requirement,
Ilgner Exh. 83, Doc. 60, Book II, page 53.

As already explained in section 15) the Vowi studies were not secret and were accessible to anybody who was justifiedly interested in them. They were generally sent by request. With respect to official authorities there was even the duty to give information pursuant to Reich laws which provided that information could be exacted (Ilgner Exhibit 43). The Prosecution claims that Vowi showed initiative of its own in giving information to the Wehrmacht Argument Staff already before the war. To support this claim, it refers to the excerpts from the weekly reports of the Reich Ministry for War covering the time from March till September 1939 which have been introduced by it as Exhibit 860. In these weekly reports mention is made repeatedly, for the time from March until the end of August 1939, of conferences with one Dr. Fernau. Dr. Fernau was a small referent in the Legationsabteilung of Vowi who, according to his own statements (Ilgner Exhibit 17C), had no instructions, or authority, to conduct any negotiations with the Virnebstab on behalf of Fernau or Vowi. The responsible chief of Vowi, Dr. Reithinger, knew nothing of this enterprise as he has testified in his affidavit (Ilgner Exhibit 41). Dr. Fernau himself has stated that the "Besprechungen" mentioned in the weekly reports were private conversations with the officials of the Virnebstab.

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whom he had known before he took up his activity with Farben (Ilgner Exhibit 174).

As for the rest, such weekly reports are of doubtful probative value. Affiant Fernau has described from his own experience which he gained when he later served on the Wehrmacht when called up by the Wehrmacht, how such reports were compiled:

"For lack of other happenings often the most insignificant telephone conversations or personal visits were styled as official actions in order to be able to feign as great activity as possible in compliance with the orders." (Ilgner Exhibit 174).

On the basis of weekly reports the affiant gives verse and chapter to this claim. This description is corroborated in full by Dr. Reithinger who shows the absolute inexactitude of a number of entries and exemplified this by concrete cases (Ilgner Exhibit 41).

For further proof of an alleged activity of Farben in this field, in the years before the outbreak of war, Prosecution relies upon the affidavit of General Ruernermann (Exhibit 953). In his direct examination through the Prosecution (transcript Engl. page 3149, German page 3169) the latter has already narrowed down his statement in his affidavit concerning the enquiries of Wehrmacht to Vowl stating that this happened not before but during the war. Moreover, the affiant Reithinger in the Ilgner Exhibit 41 has emphatically stated just with respect to the Ruernermann affidavit that in the years before the outbreak of war there was no collaboration at all of Vowl with Wehrmacht (see also transcript Engl. pages 12931 - 32, German pages 13131 - 13132).

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Collaboration in the sense hinted at by the Prosecution only started when war broke out. Since the Wuestab had no economical department of its own, the Wehrmacht wanted to seize Vowi for the purposes of the Wuestab. The plant leader of IG Berlin SW 7 at that time, Dr. Krueger, in negotiations with the military agencies conducted in the interest of Farben, brought it about that, instead of a seizure of the whole of Vowi, only part of the Vowi workers - though an important part - were conscripted for Wuestab (Proc. Exhibit 843). Farben had as little power to defend itself against this seizure as the other firms and institutions hit by the same measure (transcript Engl. page 3151, German page 3171, and Ilgner Exhibit 42). After this conscription had taken effect the Wuestab gave orders to the conscripted Vowi workers for the preparation of studies requested by it and its workers were insofar exclusively subordinated to the military directives of the Wuestab. Farben had no influence on it. The subject matter dealt with in these studies were not made known to it (to Farben) (Ilgner Exhibit 42 and transcript, Engl. page 3153, German page 3185).

The charge made by the Prosecution in connection herewith to the effect that Vowi prepared positional maps for bombing targets is completely wrong. The maps showing the locations which are in Vowi's files were merely graphical descriptions of industries based on statistics as they are in use in all statistical institutes. "Such cartographical descriptions which mostly do not even mention the place and, in the case of great cities, neither the quarter nor the position

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are absolutely unfit for the purposes of aerial warfare. Other maps did not exist at Vowd (Ilgner Exhibit 41).

As already mentioned in this Closing Brief, Dr. Ilgner fell ill at the end of 1936 and had to give up the management for practical purposes. During the time in which the happenings covered in this section occurred, Dr. Krueger was plant leader of IG Berlin NW 7 (transcript Engl. pages 9485 and 9493 - 94, German pages 9597 and 9606).

19. Wirtschaftspolitische Abteilung (Wipo)

(Pros. Trial Brief page 66)

Charge:

Wipo allegedly was founded shortly after Hitler's seizure of power in order to increase the influence of the defendants with the Nazi Party.

Evidence offered by
the Prosecution:--

Exh. 377 (NI-6544), Book 17, Engl. page 3,
German page 5;

Exh. 842 (NI-5727), Book 45, Engl. page 96,
German page 114;

Counter-Evidence:

Examination Ilgner, transcript Engl. pages
9499 - 9504, German page 9511 - 16;

Cross-examination Dr. Frank-Fahle through
the Defense, transcript Engl. pages 1954, 1963
and 1969, German pages 1942, 1950 and 1956;

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Counter-Evidence:
(cont'd)

Affidavit Terhaar, Ilgner Exh. 47, Doc. 46,
Book II, page 75;

Affidavit Dr. Gorr, Ilgner Exh. 48, Doc. 47,
Book II, page 79;

Minutes of the Working Committee of 7 September
1933, Ilgner Exh. 46, Doc. 50, Book II, page 73.

It follows from the minutes of the Working Committee of 7 September 1933 (Ilgner Exhibit 46) that Wipo was already set up before Hitler seized power. There is no link to Hitler and the Nazi party.

The increasing regulation of economy through the State as a result of the world economic crisis made its setting-up necessary. Which duties Wipo had in particular can be seen from the affidavit Dr. Terhaar, Dr. Gattineau's successor as Wipo chief (Ilgner Exh. 47).

In order to avoid repetitions we refer to the Statements of Dr. Aschenauer, Defense Counsel of Dr. Gattineau.

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20. Relationship to GW Abwehr:

(Proc. Trial Brief pages 69 - 70, Indictment, para. 58)

Charge:

IG Berlin NW 7 allegedly became the economical intelligence instrument of the Wehrmacht in Germany.

Evidence offered by the Prosecution: --

Exh. 840 (NI-9512), Book 46, Engl. page 39, German page 104;

Exh. 328 (NI-4928), Book 46, Engl. page 104, German page 123;

Exh. 915 (NI-4671), Book 49, Engl. page 50, German page 76;

Exhibit 377 (NI-6544), Book 17, Engl. page 20, German page 31;

Cross-examination Dr. Ilgner through the Prosecution, transcript Engl. pages 9668 - 9670, German pages 9793 - 9795.

Counter-Evidence:

Examination Ilgner, transcript Engl. pages 9507 - 9517, German pages 9620 - 9630;

Cross-examination Dr. Krueger through the Defense, transcript Engl. pages 2973 - 2981, German pages 2992 - 2999;

Direct examination Dr. Overhoff, transcript Engl. pages 5783 - 5786, German pages 5826 - 5830;

Affidavit Dr. Ruediger, Ilgner Exh. 68, Doc. 65, Book IV, page 59;

Affidavit Sauer, Ilgner Exh. 69, Doc. 104, Book IV, page 63;

Affidavit Rocks, Ilgner Exh. 70, Doc. 66, Book IV, page 67;

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Counter-Evidence:
(cont'd)

Affidavit Rupert, Ilgner Exh. 71, Doc. 67,
Book IV, page 69;

Affidavit Freiherr von Wilmowsky, Ilgner Exh. 72,
Doc. 68, Book IV, page 72;

Affidavit Schwarte, Ilgner Exh. 72, Doc. 69,
Book IV, page 74;

Affidavit Daeine, Ilgner Exh. 74, Doc. 70,
Book IV, page 75;

Affidavit Freiherr von Lersner, Ilgner Exh. 1,
Doc. 1, Book IV, page 76;

Affidavit von Papen, Ilgner Exh. 14, Doc. 14,
Book IV, page 81;

Affidavit Ritter, Ilgner, Exh. 18, Doc. 18,
Book IV, page 84;

Affidavit Schiller, Ilgner Exh. 75, Doc. 71,
Book IV, page 91;

Affidavit Dr. Frank-Pahle, Ilgner Exh. 179,
Doc. 285, Book XI, page 45.

The affiant on behalf of the Defense, Dr. Rupert, who was an officer of the economical intelligence service in the OEW Abwehr since the beginning of the war in 1939, has stated in his affidavit (Ilgner Exh. 71) that neither he nor any of his superiors succeeded in causing Farben to participate in the economical intelligence service, which was in line with the attitude of most of the concerns working abroad which shrank from having any connection with the intelligence service on account of its compromising character. Colonel Bloch's successor as chief of the Secret Economical Meldedienst (Reporting Service) in the OEW (Abwehr) saw fit, even as late as 1944, to give a lecture to the members of the Farben Vorstand at Heidelberg in which he

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Counter-Evidence:
(cont'd)

Affidavit Rupert, Ilgner Exh. 71, Doc. 67,
Book IV, page 69;

Affidavit Freiherr von Wilmowsky, Ilgner Exh. 72,
Doc. 68, Book IV, page 72;

Affidavit Schwarte, Ilgner Exh. 72, Doc. 69,
Book IV, page 74;

Affidavit Daehne, Ilgner Exh. 74, Doc. 70,
Book IV, page 75;

Affidavit Freiherr von Lersner, Ilgner Exh. 1,
Doc. 1, Book IV, page 76;

Affidavit von Papen, Ilgner Exh. 14, Doc. 14,
Book IV, page 81;

Affidavit Ritter, Ilgner, Exh. 18, Doc. 18,
Book IV, page 84;

Affidavit Schiller, Ilgner Exh. 75, Doc. 71,
Book IV, page 91;

Affidavit Dr. Frank-Fahle, Ilgner Exh. 179,
Doc. 255, Book XI, page 45.

The affiant on behalf of the Defense, Dr. Rupert, who was an officer of the economical intelligence service in the OKW Abwehr since the beginning of the war in 1939, has stated in his affidavit (Ilgner Exh. 71) that neither he nor any of his superiors succeeded in causing Farben to participate in the economical intelligence service, which was in line with the attitude of most of the concerns working abroad which shrank from having any connection with the intelligence service on account of its compromising character. Colonel Bloch's successor as chief of the Secret Economical Meldedienst (Reporting Service) in the OKW (Abwehr) saw fit, even as late as 1944, to give a lecture to the members of the Farben Vorstand at Heidelberg in which he

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expressed his dissatisfaction with the lack of cooperation on the part of Farben with the Abwehr (Ilgner Exhibit 70). He further testified in the same affidavit that he had seen Dr. Ilgner no more than two or three times in all his life and that the latter had played no part in the German counter-intelligence system. This is corroborated by the affiants Dr. Riediger and Saxer (Ilgner Exhibits 68 and 69). The aforementioned documents as well as the Ilgner exhibits No. 72, 73 and 179 clearly show that Dr. Ilgner did either not know at all the leading officials of the military Abwehr organization in Germany or he knew them only slightly and outside his official duties. If the allegation of the Prosecution were correct, it should have been easy for them to introduce at least a single affidavit of a OKW counter-intelligence officer in support, as this has been done by the Defense for the purposes of the rebuttal in the persons of Focke and Ruperti.

The charge of the Prosecution that Farben had placed its representatives and employees abroad in the service of the counter-intelligence has not been supported by anything. The witness Dr. Overhoff, on the contrary, has stated (transcript Engl. pages 5783 - 5788, German pages 5826 - 5830) that Farben had refused this and had in no case complied with the wishes brought to them by OKW Counter-Intelligence to receive counter-intelligence agents into their sales organization. Dr. Ilgner, in this connection, has especially been burdened with the responsibility for the cases of Baron von Lersner and Herr von Fluogge. Both were allegedly sent abroad in the interest of the military counter-intelligence organization. This assumption of the Prosecution is totally wrong.

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The two men went abroad as racial persecutees. Farben helped them in this. Freiherr von Lersner tried to mediate in the interest of peace and also conducted, amongst others, negotiations with G.H. Barlow, a friend of President Roosevelt (Ilgner Exhibits 1 and 14). Herr von Fluegge, too, had nothing to do with espionage, which is a foregone conclusion when one knows why he left Germany. He belonged to a resistance group against the national-socialist regime and was later put into a concentration camp for that reason (Ilgner Exhibit 18 and transcript Engl. pages 2973 - 74, German pages 2992 - 93).

It goes by itself that Dr. Ilgner's passive attitude toward questions of counter-intelligence did not change when, in 1944, as a result of the aggravation of the domestic situation, the counter-intelligence duties passed from the Wehrmacht into ^{the} hands of the Reich Security Main Office (SD). Dr. Ilgner was even in particularly bad repute with them because Farben and, more particularly, he himself, refused the cooperation which the SD wished. In support of this contention we refer to the Ilgner Exhibits 70 and 71. Ilgner did not entertain connections with other offices of the SD and Gestapo either (Ilgner Exhibits 74 and 75).

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21. Knowledge of the Impending War,

(Pros. Trial Brief, page 89)

Charge:

It is alleged that every intelligent man in Germany must have known from the very first moment after Hitler's seizure of power that the Third Reich was inevitably heading for war. Dr. Ilgner, too, is supposed to have known that an aggressive war was intended and allegedly supported these war plans.

Evidence offered by
the Prosecution:

The Prosecution has presented no concrete evidence.

Counter-Evidence:

Examination Ilgner, transcript Engl. pages 9517-9521, German pages 9630 - 34;

Cross-examination Dr. Krueger through the Defense, transcript Engl. pages 2969 - 70, German page 2988 - 89;

Cross-examination Dr. Reithinger, through the Prosecution, transcript Engl. pages 12940 - 41, German page 13143;

Direct examination Duke of Mecklenburg through the Defense, transcript Engl. page 9780, 9785, German pages 9910 - 11, 9916;

Direct examination Dr. Frank-Fabbe through the Defense, transcript Engl. pages 9807 -08, German pages 9940 - 41;

Affidavit Dr. Reithinger, Ilgner Exh. 151, Doc. 160, Book IX, page 85;

Affidavit Gladisch, Ilgner Exh. 82, Doc. 76, Book V, page 1;

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Counter Evidence:
(cont'd)

Affidavit Dr. von Pirpitz, Ilgner Exh. 113,
Doc. 106, Book VII, page 1;

Affidavit Willibaldo Passarge, Ilgner Exh. 59
Doc. 19, Book I, page 71;

Affidavit Zonew, Ilgner Exh. 130, Doc. 126,
Book VIII, page 30;

Affidavit Erbprinz and Erbprinzessin zu Hohen-
lohe-Langenburg, Ilgner Exh. 16, Doc. 16,
Book I, page 58;

Affidavit Freiherr von Wilmowsky, Ilgner Exh. 17,
Doc. 17, Book I, page 60;

Affidavit Mueller, Ilgner Exh. 76, Doc. 72,
Book IV, page 93;

Affidavit Freiherr von Wilmowsky, Ilgner Exh. 86,
Doc. 79, Book V, page 13;

Affidavit Dillmann, Ilgner Exh. 104, Doc. 95,
Book VI, page 30;

C.K. documents "Deutsche Auswärtspolitik" (German
Foreign Politics), Part I, Part II and Part III,
Exhibits Defense 53 - 159.

The contention that every intelligent man in Germany must have
recognized from the beginning that the Hitler regime was heading for
war is incorrect and unproven (see Defense Exhibits 53 to 159). Nor
have, beyond this, the basic prerequisites which the IMT Judgment has
postulated in a binding form for the proof of guilt for this trial
(Schnitzler Exhibit 21), been met in any way. The Prosecution has
not even attempted to show proof for the contention that Dr. Ilgner
knew Hitler's plans of attack. On the other hand, the Defense has pre-
sented a wealth of evidence showing that Dr. Ilgner's economical activity
was
/predicated on lasting peace, that

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in no way he took the possibility of war into his calculations and that, when war broke out, he would not believe that this event had happened. The affiant Mueller states with regard to this point as follows: "Dr. Ilgner was a fanatical pacifist and lived exclusively for his world economy plans (Ilgner Exhibit 76). Another affiant formulated this idea in this way: "that Ilgner banked, so to speak, on eternal peace when he planned the Eastern Asiatic development." (Ilgner Exhibit 113). (Compare also Ilgner Exhibit 104). The Duke of Mecklenburg stated as a witness on the stand: Dr. Ilgner "was opposed to a n y war. Had he been a promoter of war he would have, as I have hinted at already this morning, torpedoed his own ideas which aimed at reconciliation, world peace and cooperation." (Transcript Engl. page 9785, German page 9916). The affiant Passarge comments on this as follows: "I have only met a very few people in my life who worked as passionately as Dr. Ilgner for reconciliation and the preservation of peace..." (Ilgner Exhibit 19). The Hereditary Prince and the Hereditary Princess of Hohenlohe-Langenburg have shown in their affidavit that Dr. Ilgner, as late as the beginning of August 1939, in a conversation with them termed as absurd the idea that it would come to a war, and that he had declared that Germany and German economy were interested only in a peaceful development (Ilgner Exhibit 16). Witness Krueger in cross-examination through the Defense on the question of Dr. Ilgner's attitude towards peace or war has made the following declaration: "I think I would characterize him correctly

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by saying that he dreamt his pipe dreams of peace so loudly that they drowned out for him the clarion sounds of the war trumpet." (Transcript Engl. page 2969, German page 2988). The Bulgarian diplomatist Zonew finally summed up his opinion in the words that the outbreak of the war was "a virtual tragedy" for Dr. Ilgner (Ilgner Exhibit 126). Hereby Dr. Ilgner's absolute will to peace which was the leitmotiv of all his actions is clearly shown. He did not have advance knowledge of the war that started in 1939 and of the following attacks on foreign countries (Ilgner Exhibit 161). He did not even adjust himself psychologically to the possibility of a warlike conflict.

B. Count II:

22. General Statements:

- a) The basical questions of law concerning "Plunder and Spoliation" will be dealt with by Dr. Siemers, Defense Counsel for Dr. von Schnitzler, according to the scheme of work agreed upon amongst the Defense Counsel. In order to avoid repetitions, full reference is made to it.
- b) In order to be able to fully judge the subjective and objective character of those business transactions which the Prosecution characterizes as spoliation it seems necessary to us to make a few fundamental statements, based on the evidence, on Dr. Ilgner's basic attitude to the question of the carrying-out of common industrial projects with foreigners.

Evidence offered
by the Defense:

Examination Dr. Ilgner, transcript, Engl. pages 9521 - 29, German pages 9635 - 43;

Cross-examination Dr. Krueger through the Defense, transcript Engl. pages 2954, 2965 and 3023-24, German pages 2972, 3004 and 3045;

Direct examination Dr. Dietrich through the Defense, transcript Engl. pages 9712 - 24, German pages 9887 - 52;

Direct examination Duke of Mecklenburg through the Defense, transcript, Engl. pages 8781 - 82, German page 9912;

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Evidence offered
by the Defense -
(cont'd)

Cross-examination Dr. Hoack through the Defense,
transcript Engl. pages 2873 - 2879, German pages
2891 - 97;

Affidavit A. Mueller, Ilgner Exh. 27, Doc. 26,
Book I, pages 110 - 111;

Affidavit Dohlmann, Ilgner Exh. 104, Doc. 96,
Book VI, page 29;

Kiel Lecture of Dr. Ilgner, on 28 January 1936,
Ilgner Exh. 112, Doc. 103, Book VI, page 55;

Lecture of Dr. Ilgner, on 4 November 1936,
Ilgner Exh. 117, Doc. 110, Book VII, page 43;

Affidavit Burandt, Ilgner Exh. 115, Doc. 11,
Book VII, pages 46 - 47;

Affidavit Fischer, Ilgner Exh. 59, Doc. 56, Book
VII, pages 54 - 55;

Affidavit Dr. R. Ittinger, Ilgner Exh. 126, Doc. 122,
Book VIII, page 1;

Affidavit Dr. Gross, Ilgner Exh. 127, Doc. 123,
Book VIII, page 5;

Affidavit Freiherr von Wilmowsky, Ilgner Exh. 17,
Doc. 17, Book VIII, page 11;

Affidavit Reinhardt, Ilgner Exh. 128, Doc. 124,
Book VIII, page 15;

Affidavit Schlotterer, Ilgner Exh. 129, Doc. 125,
Book VIII, page 18;

Affidavit Zonew, Ilgner Exh. 130, Doc. 126,
Book VIII, page 20;

Affidavit Freiherr von Wilmowsky, Ilgner Exh. 131,
Doc. 127, Book VIII, page 23;

Lecture Dr. Ilgner in Vienna, Ilgner Exh. 134,
Doc. 129, Book VIII, page 33;

Affidavit Croon, Ilgner Exh. 183, Doc. 181,
Book XI, page 57.

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Dr. Ilgner, already in the years before 1939, maintained the thesis that the industrialization of a country has a beneficial effect upon the world trade as a result of the increasing purchasing power of the country in question. In the application of his economical policies, his aim was to further the industrial development of the preponderantly agricultural countries. He took the declared stand, and lived up to it, that in the case of financial participations the national partner should receive the majority interest (Ilgner Exhibit 136 and 118 as well as transcript Engl. page 9720, German page 9848). Dr. Ilgner fought for his aforementioned ideas with the greatest energy, in Germany as well as abroad, before and after the war, in a number of public lectures (Ilgner Exhibits 113, 117, 134 and 59).

Dr. Ilgner tried to bring to fruition his industrialization plans mainly in South East Europe, after the outbreak of war had automatically narrowed down his field of activity. Though his principles were not at all in line with official German economical policies in South-East Europe, he still fought for them with great energy in the various industrial committees of which he was a member (transcript Engl. pages 9715 and 9731, German pages 9843 and 9849, Ilgner Exhibits 183 and 17). According to the ample evidence offered by the Defense there can be no question of Dr. Ilgner's economical policies in the South-East having been identical with the objectives of German foreign policy. Affiant Dr. Hoack called by the Prosecution as a crown witness in this connection has not been able to maintain the vague statements of his affidavit (Pres. Exhibit 1064 (NI-10421), Book 32, Engl. page 51,

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German page 51) under cross-examination through the Defense (Manuscript Engl. pages 2873 - 2879, German pages 2891 - 2897).

The commercial councillor of the Royal Bulgarian Legation for many years sums up his own experience before and during the war as follows: "I have never been able to detect in Dr. Ilgner a tendency to exploit the partner-country in a one-sided and narrow way." (Ilgner Exhibit 130).

23. Austria and Czechoslovakia.

After the Court has ruled that the charges made by the Prosecution with respect to Austria and Czechoslovakia under Count II are irrelevant, we do not take issue with them. Insofar as the Prosecution relies on these things in support of its allegations under Count I we refer, according to the scheme set up by the Defense for the distribution of work, to the statements of Defense Counsel for Herr Saefliger, Dr. von Letzler, as far as Austria is concerned and to the statements of Defense Counsel for Dr. Egler, Henze, as far as Czechoslovakia is concerned.

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24. Poland.

(Prosecution Trial Brief, page 103)

Charge:

On 28 July 1939, under the direction of Dr. Ilgner, a comprehensive report entitled "The most important Chemical Industries in Poland" is alleged to have been prepared. The Prosecution infers from it that Dr. Ilgner knew of the impending attack against Poland.

Evidence offered by the Prosecution:

Exh. 1135 (HL-9151), Book 55, Engl. page 50, German page 62;

Exh. 1136 (HL-9154), Book 55, Engl. page 52, German page 63;

Exhibit 1137 (HL-9155), Book 55, Engl. page 53, German page 67.

Counter Evidence:

Examination Ilgner, transcript Engl. pages 9493, 9559, German pages 9604 - 5, 9707-8;

Cross-examination Dr. Bennart through the Defense, transcript Engl. page 3064, German page 3085;

Affidavit Dr. Reithinger, Ilgner Exh. 37, Doc. 34, Book II, pages 27/28;

Affidavit Dr. Ilgner, Ilgner Exh. 187, Doc. 184, Book XI, page 70;

List of Vowl studies in Farben's Control Office at Frankfurt-Oriental, Ilgner Exh. 52, Doc. 44, Book III, page 1.

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Among the great number of market analyses, descriptions of firms and reports on the chemical industries in foreign countries which Vowi worked out, there was already since 1934 a study on the chemical industry of Poland (transcript Engl. page 9433, German page 9605). It was one of the working principles of Vowi to bring its work up to date as far as possible. Thus, in regular intervals, the whole material would be overhauled (transcript Engl. page 3064, German page 3085, Ilgner Exhibit 37). For Poland, for instance, a further report was prepared on 15 October 1937, entitled "The most Important Firms of the Chemical Industry in Poland".

The list of the Vowi studies at the Records Building of the Control Office of the IG Farbenindustrie, Frankfurt/Main-Oriesheim, introduced by the Defense as Exhibit No. 83 which does not claim at all to be complete, bears this out: It shows, furthermore, that in the years from 1937 until the middle of 1939 more than 30 studies were compiled regarding the chemical industry of the various countries, including a great number of countries outside Europe. This alone shows that it is absurd to draw from the fact that any such study was written, the inference that it was known that warlike intentions against the country in question were entertained. The excerpts from the Vowi study, dated 28 July 1939, submitted by the Prosecution (Exhibits 1035, 1036, 1037), show clearly that they are descriptions of firms such as were commonly made in economical institutes. The claim of the Prosecution on page 102 of its Trial Brief that this Vowi report

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contained statements regarding the "adaptability to the German war economy" is a mere fabrication.

For completeness' sake we would like to point out that the contention of the Prosecution that this report was prepared under the guidance of Dr. Ilgner is not true either. As already repeatedly stated Dr. Ilgner was ill from the end of 1939 until the middle of 1940 and was absent from the management of IG Berlin NW 7 (Ilgner Exhibit 167).

As for the rest, the Prosecution has neither claimed that Dr. Ilgner knew of economical transactions in Poland nor that he took part in them.

25. Russia:

(Proc. Trial Brief, Part II, pages 16 - 18, Indictment para. 117).

Charge:

Dr. Ilgner is supposed to have taken part in the alleged spoliation of Russia by attending conferences in the Reich Ministry of Economics together with other defendants and by giving, moreover, German employees the order to prepare suggestions for the reorganization of the Russian enterprises under German guidance after the Arosaig-Falkenberg pattern.

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Evidence offered by
the Prosecution:

Exh. 1176 (NI-1334), Book 63, Engl. page 45,
German page 40;

Exh. 1177 (NI-8077), Book 63, Engl. page 47,
German page 42;

Exh. 1209 (NI-6349), Book 64, Engl. page 53,
German page 34;

Counter-Evidence:

Examination Dr. Ilgner, transcript, Engl. pages
9559 - 9564, German pages 9708 - 9715;

Affidavit Gierlichs, Ilgner Exh. 162, Doc. 161,
Book IX, page 87;

Affidavit de Haas, Ilgner Exh. 163, Doc. 162,
Book IX, page 89;

Affidavit W. Passarge, Ilgner Exh. 164, Doc. 163,
Book IX, page 92;

Affidavit W. Passarge, Ilgner Exh. 19, Doc. 18,
Book I, page 78;

Affidavit Ir. Ilgner, Ilgner Exh. 195, Doc. 193,
Book XI, page 105.

After the outbreak of war against Russia, Dr. Ilgner was invited to attend two meetings at the Ministry for Economics in which, as is shown from the Prosecution document, Exhibit 1177, mainly personal questions were dealt with. The Prosecution document further shows that the chemical industry was requested to name such employees as appeared to be suitable for administrative functions in Russia. Dr. Ilgner availed himself of this opportunity to have employees who had already been called up for the Wehrmacht, withdrawn from frontline service (transcript Engl. page 9561, German page 9711).

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The assignment mentioned in the Pros. Exhibit 1175 given by Dr. Ilgner to Herr Gierlich asking him to prepare suggestions for the re-organization of Russian enterprises under German guidance was never carried out. It evidently was a suggestion that had reached Dr. Ilgner from the outside and which he did not follow up at all (Ilgner Exhibit 162). That this assignment was not carried out by other Farben employees can be seen from the de Haas affidavit (Ilgner Exhibit 163). The prosecution has claimed in its Trial Brief that it can be seen from its Exhibit 1177 that discussions about the re-privatization of the Russian industry, and the Farben share in it, took place. The language of the minutes of the Vorstand meeting of 10 July 1941 (Pros. Exhibit 177) shows clearly that merely the information was received that the German Reich itself would become the owner of the chemical enterprises in Russia. As for the rest, the subject discussed at this meeting was, the duties of the Chemie Ost G.m.b.H. which, as the minutes and other documents show, was a mere trust company (Ilgner Exhibit 164). Chemie Ost G.m.b.H. assisted from any active work under the supervision of manager W. Pasenrges. "Ilgner was absolutely disinterested in the Russian problems." (Ilgner Exhibit 19).

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26. Norway;

(Pros. Trial Brief, Part II, pages 32 - 36,
Indictment, para. 101 - 102)

Charge:

Some of the defendants, amongst them Dr. Ilgner, allegedly prepared and carried out a plan through which the Norsk Hydro firm, Oslo, was forced to participate in the newly founded firm of Nordisk L  tmetall and to increase its own share capital and that this increase of capital was then used to convert the alleged French majority holdings at Norsk Hydro into a minority, creating at the same time a German majority.

Evidence offered by
the Prosecution:

Exhibits 1191 - 1212 and 585 - 586, all in Pros.
Doc. Book 65;

Pros. Exhibit 2018 (NI-14665) }
Exh. 2019 (NI-13205) } all submitted
Exh. 2030 (NI-12209) } during cross-
Exh. 2021 (NI-13305) } examination Dr.
Ilgner on 16
March 1948.

Exh. 2000 (NI-8973) Submitted during
cross-examina-
tion Haefliger
on 26 March 1948.

Exh. 1623 (NI-9360) submitted on 24 Nov. 1947

Cross-examination Brauch through the Prosecution, transcript, Engl. pages 5455 - 5468 and 5514 - 5519, German pages 5497 - 5501, 5552 - 5557;

Cross-examination Bueglin through the Prosecution, transcript Engl. pages 8468-69, German pages 8547 - 50;

Cross-examination Haefliger through the Prosecution, transcript, Engl. page 9211 - 14, German pages 9315 - 17;

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Evidence offered by
the Prosecution: - - -
(cont'd)

Cross-examination Ilgner through the Prosecution, transcript Engl. pages 9644 - 59, German pages 9769 - 82;

Cross-examination Oster through the Prosecution, transcript Engl. pages 20784 - 88, German pages 10931 - 34;

Counter-Evidence:

Examination Dr. Krauch through the Defense, transcript, Engl. pages 5165 - 69, 5396 - 5401, German pages 5191 - 96, 5428 - 33, and Engl. pages 5569 - 70, German pages 5607 - 5609;

Examination Dr. Baergin through the Defense, transcript Engl. pages 8403 - 09, and 8445, German pages 8484 - 90 and 8524 - 25;

Examination Hasfliger through the Defense, transcript, Engl. page 9190 - 9190, German pages 9292 - 94;

Examination Dr. Ilgner through the Defense, transcript Engl. pages 9675 - 83 and 9734 - 45, German pages 9737 - 50 and 9862 - 73;

Examination Dr. Oster through the Defense, transcript Engl. pages 10738 - 42, and 10738 - 10739, German pages 10884 - 97 and 10937 - 38;

Examination Dr. Frank-Fahle through the Defense, transcript Engl. pages 9815 - 18, German pages 9946 - 51;

Cross-examination Dr. Meyer-Wegelin through the Defense, transcript Engl. pages 3087 - 90, German pages 3107 - 39;

Ilgner Exh. 196 - 245 (Ilgner Document Book XIIA) and Ilgner Exh. 236 - 259 and 32 (Ilgner Doc. Book XIIB);

Ilgner Exh. 260, Doc. 259, Supplement to Doc. Book XIIA;

Ilgner Exh. 261, Doc. 262, Supplement to Doc. Book XIIA;

Ilgner Exh. 262, Doc. 264, Supplement to Doc. Book XII B;

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Counter-Evidence
(cont'd)

Ilgner Exh. 263, Doc. 260 (NI-13194), Supplement to Doc. Book XIII;

Ilgner Exh. 264, Doc. 261 (NI-13207), Supplement to Doc. Book XIII;

Ilgner Exh. 265, Doc. 263 (NI-13204), Supplement to Doc. Book XIII;

Reefliker Exh. 37, Doc. 43, Book III, page 65;

Ruergin Exh. 37, Doc. 4, Book I, page 34;

Oster Exh. 51, Doc. 47, Book II, page 50;

Oster Exh. 53, Doc. 49, Book II, page 54;

Oster Exh. 54, Doc. 50, Book II, page 56;

Oster Exh. 55, Doc. 51, Book II, page 59;

Oster Exh. 56, Doc. 52, Book II, page 61.

It should be noted at the outset that in pursuance of the Court's suggestion, that the Defense divide its labor, we have also undertaken to include into our Closing Brief the so-called Norway case as far as possible as a whole, in the same way as this has been done in the presentation of our documents.

a) The Prosecution tries to support its thesis that there was a comprehensive plan of Farben's "for the complete economic domination" of Norway and for the "exploitation and colonisation of the Norwegian economy" by asserting, amongst other things, that Farben had been acting in full harmony with the Government. Many defense documents show that the contrary was the case. "It can be said quite generally that

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Farben was not over-popular with the German Reich Commissioner for Norway, Karboen. Moreover, there was a strong feeling of antagonism between Farben on the one hand and Dr. Koppenberg on the other hand." (Affiant Berghold, Ilgner Exh. 199, see also Ilgner Exhibits 196, 197, 211 and 234).

The further attempt of the Prosecution to identify Farben with the official project for the extension of the Norwegian production of light metals estimated at 1 billion Norwegian Crowns has been disproved by the evidence. The Prosecution Exhibit 1300, which represents the minutes of the Vorstand meeting of 2 September 1943, shows already clearly that the official agencies sought neither the advice nor the opinions of Farben with respect to the official light metals plans of Norway (see also Ilgner Exhibit 197, questions 2 to 4). Now Exhibit 1623 referred to by the Prosecution, representing the minutes of a meeting of the commercial Committee of 18 March 1941, must be understood in reality can be seen from the interrogation of Dr. Ilgner (transcript Engl. page 9632, German page 9741 - 42) and can also be taken from the document itself. Finally the Prosecution has also referred to Exhibits 1192 and 1191. Both documents have nothing to do with the Norsk Hydro/Nordisk Lettmetall transaction. Exhibit 1192 contains the political opinions of Herr Meyer-Kuester, Sachbearbeiter (man in charge of special matters) of Farben's, who had nothing to do with the questions under discussion (transcript Engl. pages 9190 - 92, German page 9294 and Engl. pages 5569 - 70, German pages 5608 - 09). With regard to the so-called "New Order" in Norway

(Exhibit 1191) we refer to the basic statements of Dr. Siemers, Defense Counsel of Dr. von Schmitzler, which he made on the subject. Page 35 of the original of this document shows moreover that this study, made by order of official agencies (see Pros. Exhibit 1049 (VI-4897), Book 51, Engl. page 130, German page 38), was passed on, if at all, to the Reich Ministry of Economics not any earlier than the end of September 1941. At this time, however, the negotiations concerning the Horsk Hydro/Horsdisk Lettinmetall transaction were already terminated and the new factory was building (transcript Engl. page 9576, German page 9737).

The real position was quite different from what the Prosecution tries to make out. For the full understanding of the matter it seems appropriate to consider briefly the historical development.

b) Between the predecessor-firm of Farben, the Badische Anilin- und Soda-Fabrik, Ludwigshafen, and Horsk Hydro, Oslo, close relationships existed dating back to about 1908/09. Through the technical developments this collaboration was temporarily interrupted but was resumed and deepened again in 1927. The agreements concluded at that time resulted in mutual financial participations. Farben took a 25 % interest in the Horsk Hydro capital. The General Director of the Horsk Hydro, Dr. Aubert, joined Farben's Aufsichtsrat, and Geheimrat Schmitz joined the Styre (Board of Directors) of Horsk Hydro (transcript Engl. pages 10738 - 39, German pages 10884 - 10885). Horsk Hydro's production was confined to nitrogen products. In order to be able

to better utilize the water power available, Norsk Hydro had already, as early as 1932, the wish to take up further productions, amongst others, in the magnesium field. Things, however, never reached the stage of actual negotiations (transcript Engl. page 5396, German page 5429).

c) Norsk Hydro's capital was widely scattered over the international capital market. About 33 % were in the hands of a great number of French shareholders, represented by the Banque de Paris. This banking firm, moreover, represented a ^{greater} number of non-French shareholders. The whole proportion of Norsk Hydro's share capital administered by the Banque de Paris and other French banks amounted to 65 %. Beyond this, smaller parcels of Norsk Hydro shares were on the Norwegian and Swedish capital markets (Ilgner Exhibit 210, Book XIII, page 61).

Towards the end of the twenties, Farben sold, with the approval of Norsk Hydro, half of its Norsk Hydro shares to IG Chemie Basel. On account of their holdings of 12 ½ % of Norsk Hydro's share capital each, Farben and the IG Chemie were ^{the} biggest single shareholders. Since 1928, they were represented in the annual general meetings of Norsk Hydro without exception through the general director of the company, Dr. Aubert (Ilgner Exh. 210, Book XIII, page 64). Through the dissolution, in 1940, of the agreements concluded between Farben and IG Chemie Basel

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the Norsk Hydro shares belonging to IG Chemie became international property not subject to any influence on the part of Farben (transcript Engl. page 9699 and pages 5581 - 83, German pages 9781 - 82 and 5706 - 5708).

The Styre (Board of Directors) of Norsk Hydro consisted of the following members:

M. HALLENBERG sen., Head of the Enskilda Bank, Stockholm, Sweden,
President;

Dr. AUBERT, Norwegian, General Director,

SIR THOMAS FRANKLEY, Norwegian

MOREAU)
VIBLATTE) Banque de Paris et des Pays-Bas, Paris, Frenchman,

Geholmrat SCHMITZ, IG Farbenindustrie Aktiengesellschaft, German.

On the suggestion of the Norsk Hydro administration, Dr. Oster was chosen to be a further Styre member at the end of 1940. This was done at the express wish of Dr. Aubert, who expected this cooption to be a strengthening of the Norsk Hydro administration against the Quisling Government and the German Reich Commissioner in Norway. On account of his heavy load of work, Dr. Schmitz had been to Oslo only once during the 14 years of his membership in the Styre at Norsk Hydro and was, therefore, hardly a help for Norsk Hydro during the occupation (transcript Engl. pages 8856 - 56, German pages 8954 - 55 and Engl. pages 1074a and 43, German pages 10888 - 10889, as well as Oster Exh. 51). The cooption of Dr. Oster did not take place by any means, as the Prosecution tries to make it out, on the instigation of, or even under pressure

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of
of, Farben in the course of one/the "carefully worked out plans".

After Sir Thomas Fearnley had left the Styre of Norsk Hydro toward the end of 1941, the member of the administration, Bjarne Eriksen, a Norwegian, was chosen in his place. After the death of Herr Wallenberg in summer 1942, Dr. Aubert became President and Herr Eriksen General Director of Norsk Hydro.

d) After the occupation of Norway in April 1940, the Reich Ministry of Aviation intended to erect in Norway giant aluminum factories and appointed Dr. Koppenberg, the former General Director of the Junkers firm, to be General Plenipotentiary endowed with extraordinary powers (transcript Engl. page 5186, German page 5191). In summer 1940, Dr. Koppenberg tried to include also Norsk Hydro into his program. As Norsk Hydro did not want to collaborate with German State agencies, Dr. Aubert, in October 1940, called upon Farben's Aufsichtsrat chairman, Prof. Dr. Erach, in Berlin, in order to ask Farben for help. Dr. Aubert came back to Norsk Hydro's old wishes and suggested that Farben build a magnesium factory in Norway together with Norsk Hydro. Dr. Aubert wanted this particularly because he expected of it a strengthening of the Norsk Hydro administration against political interference on the part of the German Reich Commissioner in Norway and the Quisling Government (transcript Engl. pages 5167 - 68 and 5397 - 99, German pages 5193 - 94 and 5428 - 30).

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e) On the other hand, Farben had received at the end of 1939 or beginning of 1940 from the Reich Ministry of Aviation the imposition to set up a further magnesium factory. It had first been contemplated to erect it at Gersthofen, Bavaria. The erection of the plant at this place meeting with difficulties on technical grounds, the Reich Minister for Aviation ordered that the plant be erected in Norway (Ilgner Exh. 196, page 1 - 3 and transcript Engl. pages 5402 - 03, German pages 5433).

f) In view of the wish on the part of the Norsk Hydro and the imposition laid upon Farben, negotiations were opened at the end of 1940 ^{of} and the beginning/1941 between the Norsk Hydro administration and Farben with the result that the two firms were to form together a new company in Oslo which was to produce magnesium after the Farben process. The agreements which had been worked out in common were already at the signing stage when Dr. Koppenberg, on the strength of his power of authority, demanded that production be extended to aluminum and aluminum hydroxide and demanded at the same time that a Reich Corporation be given a share in the new company (Ilgner Exhibit 198). Now when Farben - in compliance with the wish of Norsk Hydro - tried to carry out the new production alone with Norsk Hydro and, if this should not be possible, to get through as high a participation of Norsk Hydro as possible, can clearly be seen from the minutes of the Vorstand meeting of 5 February 1941, the above-mentioned document, which has also been introduced by the Prosecution as Exhibit 1193, and from the Prosecution Exhibit 587. In the end, Farben had to yield to the orders of the Reich Ministry of Aviation and had to face the fact that each of the three partners

was given a one-third share in the new corporation (Nordisk Løttnetall). This can be seen clearly from the Prosecution Exhibit 1195 (see in this connection transcript Engl. pages 9185 - 87, German pages 9287 - 90 and also Ilgner Exhibit 196, pages 3 - 4).

The initial financial requirement for the construction of the Nordisk Løttnetall plant, including the Kvar power station, was estimated to amount to 150 million Norwegian Crowns (Proc. Exhibit 1193, Book 65, Engl. page 43, German page 87). The three partners of Nordisk Løttnetall (Norsk Hydro, Farben and the Reich-owned corporation) agreed to raise the money as follows:

share capital of the Nordisk Løttnetall	nor.	45 million
shareholders loan	approx.	" 95 - 100 million
Debenture loan in the Scandinavian countries	"	" 15 - 20 million

(Proc. Exhibit 1205).

Each of the three partners' portion, accordingly, was about nor. 50 million. The portions of the German partners should mainly be paid through deliveries of material from Germany, which was done in fact. Norsk Hydro was to make available the necessary ready money as her share of the capitalization (Proc. Exh. 1205 and Ilgner Exhibit 199, Book XIII, page 30).

In order to discuss the new situation caused by the intervention of Dr. Koppenberg at the beginning of February 1941, conferences took place in the course of February between Farben and the Norsk Hydro administration.

In these conferences it was resolved to carry out the old plan in spite of the change of circumstances. At the end of February, between the Styre members of Norsk Hydro then present at Oslo, President Wallenberg, Dr. Aubert and Sir Thomas Fearnley, a conference took place, at which these gentlemen declared their agreement with the proposals of the Norsk Hydro administration. The same Styre members further made the following proposals in agreement with Mr. Eriksen:

- 1) that Norsk Hydro's portion in the new company be raised by increasing the share capital of Norsk Hydro from about nor. 100 million to about nor. 160 million (Ilgner Exhibit 261, para. 2);
- 2) that, in application of the provision of Article 15, para. 3 of the Company Rules of the Norsk Hydro, 43.05 % of the subscription rights of the new shares be made available to a German-Norwegian industrial group.

The Company Rules of Norsk Hydro (Prosecution Exhibit 1202) show clearly that the old shareholders of the company have no claims whatever to these 43.05 %. These are, on the contrary, at the disposal of the Styre who can place them in a way "which serves the best interests of the company". In 1927, in view of the technical help lent by Farben in the nitrogen field to Norsk Hydro, it was considered to be in the interest of the company to leave Norsk Hydro shares to Farben on the occasion of the capital increase. For the same reason,

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on the occasion of the Oslo conferences in February 1941 the administration of Norsk Hydro and the above-mentioned Styre members proposed that the subscription rights in the new shares to the amount of 43.05 % of the new capital increase be assigned to the three partners of the Nordisk Lettmetall which was to be formed, i.e., to Farben, to the Reich corporation and, instead of Norsk Hydro, to a Norwegian industrial group connected with it. General Director Eriksen made the following comment on it in his letter of 3 April 1941, written soon after the Oslo conferences: "... the reason for this are the new assets which are being brought into the company (i.e. the Nordisk Lettmetall) which has been established through the cooperation in important new industrial fields (in conjunction with the capital expansion) between Hydro, Farben and Nordag (Ilgner Bch. 264, page 4 of the document). (Emphasis supplied).

According to the custom followed at Norsk Hydro the non-Norwegian Styre members were to be informed of the proposals of the administration in writing in the shape of dossiers. On the suggestion of Dr. Ilgner who, with other Farben gentlemen, took part in the Oslo conferences, President Wallenberg went to Paris in March 1941 in the company of Dr. Eriksen and Dr. Ilgner in order to attend conferences of the French Styre members, Bureau and Vibrette, and the French Aufsichtsrat member of Norsk Hydro, Couture. The first talk with the French gentlemen was conducted with Herr Wallenberg alone and he informed them of the measures planned. His son, Jacob Wallenberg, his successor and closest assistant, testified that his father who has died in the meanwhile, recommended

to the French members to agree to the capital increase (Ilgner Exhibit 260). The talks in question took place on 13 and 14 March 1941 (Ilgner Exhibit 261, para. 2).

The Prosecution contends in this connection that the French Styre members, through Farben's fault, had not been adequately informed and bases itself in support of this contention especially on its Exhibit 2019. This document itself shows that, what was discussed then in connection with the formation of Nordisk Lettmotell, was the passing on of the technical agreements, that is to say the license agreements. The document further shows that the German authorities had forbidden that Farben hand over to France those documents containing technical details. The further document, Exhibit 2021, submitted in this connection shows that Mr. Eriksen, too, was aware of the fact that these technical details could not be passed on in writing. This document finally shows that Farben in spite of the ban was prepared to give the Frenchmen all information on the technical questions by word of mouth. Dr. Ilgner has stated in the re-direct examination that this was indeed done (transcript Engl. pages 9743 - 45, German pages 9871 - 73). Above and beyond this, the Defense has shown in its turn the great help Farben lent in the question of the information of the French Styre members through the administration of the Norsk Hydro (Ilgner Exhibits 214 - 226). The Ilgner Exhibit 265 subsequently submitted by the Defense shows that the inclusion of Farben

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in the passing on of documents to Paris was done at the express wish of Dr. Aubert,

That the contention of the Prosecution about inadequate or not timely information of the French, especially on all details concerning the capital increase, is not true, can be seen from the following: By their letter of 28 April 1941 to Mr. Wallenberg, Messrs. Moreau and Couture, speaking also for M. Vibratto, declared their approval that Norak Hydro take a share in Nordisk Lattmetall and stated that the production of Lattmetall would consist of aluminum and some other products (Ilgner Exhibit 263). By his already mentioned letter of 3 April 1941 (Ilgner Exhibit 264) General Director Eriksen passed on the data for the conference with the French gentlemen which contained all necessary details with regard to the capital increase of Norak Hydro. Prosecution Exhibit 2018 shows that the Frenchman received these data. The draft resolution on the capital increase to be submitted to the extraordinary meeting mentioned in the Ilgner Exhibit 264 and the Prosecution Exhibit 2018 is contained in the Ilgner Exhibit 212. This document shows that the draft was dictated by Mr. Eriksen and signed by Messrs. Wallenberg, Aubert, Fearnley and Eriksen. Finally we refer to Ilgner Exhibit 226 in this connection. The enclosure to the letter contained in this exhibit shows that the Banque de Paris published in France on 14 June 1941, and for the second time before

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24 June 1941, detailed statements concerning the capital increase of Norsk Hydro. All this shows clearly that the French were fully informed of the details essential for the forming of their opinions.

Just as the French Styre members gave their consent in the question of the participation of Norsk Hydro in the Nordisk Lettmetall, they also gave their consent for the capital increase of Norsk Hydro made necessary by it. Dr. Aubert has put on record in the minutes of the Styre meeting of the Norsk Hydro of 19 June 1941 written by himself that the decision concerning the capital increase was taken unanimously since all Styre members had declared their approval. (Ilgner Exhibit 261, para. 6). At the express wish of General Director Eriksen, (Ilgner Exh. 239 and 219) the French Styre and Aufschichtsratsmembers of the Norsk Hydro repeated their consent for the carrying out of the capital increase which they had given before by wire (Ilgner Exhibits 230 and 261, para. 6).

The French shareholders were not represented in the extraordinary general meeting of 30 June 1941 in which the capital increase was formally agreed upon. This circumstance, however, is neither of legal nor economical significance, nor can, as the Prosecution seems to think, Farban be blamed for it. Dr. Ilgner had, on the contrary, made the suggestion that one of the French gentlemen go to Oslo. He had already received the permits required for this; the trip was dropped, however, at the express wish.

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of the Frenchmen (transcript Engl. page 9635 and 9684, German pages 9746 and 9777). In this connection the Prosecution has introduced Exhibit 2020 which is, however, not good enough to shake the statement of Dr. Ilgner. It is a telegram from IG Berlin NW 7 of 7 June 1941 (see in this connection Ilgner Exhibit 261, para. 3), in which, inter alia, the opinion of the Norsk Hydro administration is passed on to the Frenchmen that the full representation of the Frenchmen on the general meeting was not necessary to safeguard the rights of the French shareholders. It cannot be seen in how far such an expression of an opinion on the part of Norsk Hydro is to incriminate Dr. Ilgner (see in this connection Ilgner Exhibit 264, page 3 of the document). The fact that the French shareholders were not represented in the general meeting is, moreover, irrelevant for the following reason: The French shareholders of Norsk Hydro had always been represented at the general meetings by the Banque de Paris. The representatives of this bank had, according to the minutes of the Styre meeting of 19 June 1941 (Ilgner Exhibit 261, para. 6) and/or by their letter of 26 April 1941 to President Hallenborg, (Ilgner Exhibit 263) given their consent previously. Had they, or one of them, appeared at the general meeting of 30 June as representative of the French shareholders they would only have repeated their approval, which they had given before.

b) The Prosecution further contends that it was part of the Farbon plan, carefully worked out and put into action, that the French shareholders were prevented from

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exercising their subscription rights to the amount of 55.95 \$, which was their share. The Prosecution document Exhibit 2018 shows that all participants in the Paris conference of March 1941, that is to say, including Ilgner, were prepared to meet the wishes of the French shareholders. After the conclusion of the Paris conference, however, a new situation emerged for all concerned, including Farben, for the following reasons.

Behind Farben's back, the Reich Ministry for Economics had commissioned the Dresdner Bank to buy up Hoesch Hydro shares from French sources in France on behalf of VIAG, a Reich-owned corporation. Farben heard nothing of it first. The Dresdner Bank had been expressly bound to secrecy by the Reich Ministry for Economics (Ilgner Exhibit 244 and 245). How much Farben was surprised when they learned of it by chance, and how strong Dr. Ilgner's reaction upon it was, is shown from the affidavit of H. Rainsdre, Paris, (Ilgner Exhibit 211). After this had become known, at a meeting at the Reich Ministry for Economics called to clarify the new situation, Farben was informed that the Ministry for Economics had in its turn the plan to acquire as many Hoesch Hydro shares as possible. That this was not a common plan of the German Government and Farben can be seen, inter alia, from the last paragraph of the Prosecution document 1903. The affiant Berghold, an influential member of the Economical Department

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the German Reich Commissariat for Norway, has corroborated above and beyond this that he had learned from a conference with President Kahr1 of the Reich Ministry for Economics that Kahr1 was not willing at all to leave Farben all the influence on Norsk Hydro (Ilgner Exhibit 199, Book XII B, page 1).

Until August 1941, there was no clearing agreement at all between France and Norway (Ilgner Exhibit 199, Book XIIA, page 1); the agreement concluded subsequently merely provided for the payment of mutual deliveries of goods, but excluded the transfer of capital (Ilgner Exhibit 262). There was thus no regular facility for the transference of the equivalent of the subscription rights from France to Norway. This fact was, of course, known to the Banque de Paris, which was a big banking institute with international business, when the negotiations were carried on. The use of French blocked assets in Norway would, in this situation, have been the only possibility to pay the subscription rights falling to the share of the French shareholders of Norsk Hydro. A special authorization of the German Reich Ministry for Economics was, however, required for this. Such an authorization, the Reich Ministry for Economics was unwilling to give under any circumstances. This is clearly shown from Prosecution Exhibit 1304, para. 4, and from affidavit Berghold (Ilgner Exh. 199), in which the affiant states: "In this conference, Kahr1, (Reich Ministry for Economics; our insertion) also demanded that the French shareholders should not be allowed

to use French blocked assets in Norway for the acquisition of the new shares to be issued by Norsk Hydro through the increase of capital. Farben was powerless against this situation, Erik Wallenberg also confirmed that the Ministry of Economics must be blamed for the existing difficulties. He stated in his affidavit (Ilmer Exh. 260) the following:

"At the discussions concerning the capital stock increase, the French stockholders had expressed certain wishes in regard to the possibility to subscribe for their stock in Norwegian Crowns. No objections were raised on the part of Farben against the wishes. However, these wishes were not complied with later on by the German authorities."

In order to prevent that the subscription rights to which the French and international shareholders were entitled would expire without an indemnification, which would have been the natural consequence of this situation, Dr. Ilmer suggested to the Banque de Paris to ask President Wallenberg in Stockholm to propose an adequate purchase price for the subscription rights to be acquired. In this connection Dr. Ilmer endeavored to see to it that the shareholders would receive as high an indemnification as possible (Ilmer Exhibit 311). It was not the question of an enforced sale, as the Prosecution seems to assume but of a sales opportunity for the shareholders (transcript Engl. page 9636, German page 9745-46).

By having President Wallenberg, a banker of a neutral country, act as an intermediary, the determination of a fair price was guaranteed. The price of ffra. 310.- per subscription right, calculated by him, appears to be extra-ordinarily high compared with the former quotations of the Norsk Hydro shares; the explanation is that in arriving at the price, consideration was given to the fact that 43.05 % of the new shares were not offered to the old shareholders. This offer was accepted by the Banque de Paris, as well as by Farben (Ilgner Exhibit 231 and 260). The German group made its offer to the Banque de Paris via the Heskilde Bank, Stockholm (Ilgner Exhibit 246). On orders of the German Government, the Bank der Deutschen Luftfahrt acted as the buyer of the subscription rights for the German group (Ilgner Exhibit 250). By this arrangement, generally agreed to by all the interested parties, the rights of all the French and international shareholders were fully taken into consideration, which means also of those who were not willing from the beginning to participate in the capital stock increase. It may be seen from the publication which the Banque de Paris issued previous to the general stockholders meeting of 30 June 1941 (Ilgner Exh. 226, Book XII A, page 5) that there were French and international shareholders who were on principle not inclined to exercise their subscription rights and that this was known to the Banque of Paris. It can be readily understood that many shareholders did not want to invest their money in a firm which was located in German occupied Norway. At the special request of the Banque de Paris a generous settlement was also provided by the German group for the French shareholders.

who were prisoners of war (Ilgner Exh. 260).

As to the above-mentioned matter we refer to the transcript, Engl. p. 9834-36, Germ. p. 9745-47 and to the Ilgner Exhibits 211, 254 and 255.

Apart from this, the sale of the subscription rights as well as their collaboration in the capital stock increase at the Norak Hydro represented regular banking business for the Banque de Paris, bringing them more than ffra. 3,5 million in this connection (comp. Ilgner Exh. 230, 234, 235, 246, 247, 250, 251).

Payment of the subscription rights was made through the Bank der Deutschen Luftfahrt by means of the German-French clearing agreement; there was no other way to make payment at that time.

Indeed, it may be seen from the Schnitzler Exhibit 91, Document 88, Schnitzler Doc. Book V, page 32, that the French were greatly interested in making payment through clearing channels, had it been otherwise.

1) Dr. Ilgner was asked to participate in the negotiations known as "Case Norway" for the first time at the discussions mentioned under c) which were held in Oslo at the end of February 1941, thus at a time the basic questions in regard to the setting-up of the Nordisk Løttnetall had already been settled. He was called in at that time to give his expert opinion on financing problems relating to the Nordisk Løttnetall. Dr. Ilgner at no time was a member of the Styre of Norak Hydro, as to the questions in connection with the capital stock increase of the Norak Hydro his activity was limited in the main

to the problems which concerned Farben as stockholder of the Norsk Hydro. Apart from this he made the good offices of Farben in this connection also fully available to the administration of the Norsk Hydro in Norway and also to the Banque de Paris in Paris.

f) From the above description of the situation may be seen that exclusively contractual transactions were involved in the case Norway, as set forth by the Attorney Dr. Siewers, the defense counsel for Dr. von Schmitzler, in his basic arguments in the plea regarding the question of spoliation, voluntary contractual agreements do not come at all under the protective regulations of the Hague Rules for Land Warfare. We refer to these statements for a more detailed argumentation. In addition to this it is to be said as a matter of principle that the regulations of the Hague Rules for Land Warfare apply merely to the protection of civilian life of the occupied country in question and not to the protection of the interest of third parties in the country concerned. We also refer in this respect to the basic arguments of Attorney Dr. Siewers in his plea to Case Winnick. Already from the point of view of theoretical law these two reasons alone preclude a violation of the provisions of the Hague Rules for Land Warfare in regard to the purchase of the French subscription rights.

The entire argumentation of the Prosecution in the Case Norway is therefore irrelevant. Even though this were not the case the argumentation of the Prosecution would not be conclusive. The presentation of the facts has shown

that the entire Case Norway concerns bi-lateral agreements in contractual form which applies as well to the foundation and the holdings in the Nordisk Løttemetall firm as also to the capital stock increase at the Norsk Hydro and the purchase of the French subscription rights. The Prosecution has not been able to furnish proof that Farben or any other defendant had brought pressure or coercion to bear, either directly or indirectly, on the Norwegians or on the French at the time these contracts were made. If such pressure had been exerted it would have been easy for the Prosecution to procure affidavits, particularly from the foreigners who were involved at that time. Although a representative of the Prosecution had gone to Oslo and Paris especially for the purpose of investigating the Norway transaction, yet the Prosecution has not submitted any affidavits of any of the still living foreigners (Generaldirektor Eriksen, Sir Thomas Fearnley (Oslo), Wibrette, Moreau and Couture (Paris) who had a leading share in the transaction. This alone is a negative proof of the fact that no pressure had been exerted by Farben or by the Farben executives. Beyond this the defense has furnished positive proof that no pressure had been exerted, that, on the contrary, the negotiations had been conducted by the Farben executives in an absolutely fair and decent manner. It is particularly being pointed in this respect that the defense has adduced this evidence although the burden of proof did not rest with them, since the Prosecution did not meet its obligation to submit evidence on their part.

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In this connection, I particularly want to refer to the statement of the managing director Eriksen of 35 January 1947 (Oster Exh. 53) and of 12 November 1946 (Ilgner Exh. 33). The affiant expressed his appreciation of the support which Dr. Oster and Dr. Ilgner lent to the Norsk Hydro and to its executives during the war. That the Prosecution did not succeed in getting further detailed informations about the transaction in question, - as it can be seen from the Ilgner Exh. 258, can be attributed to the fact that he has given an affidavit to the Prosecution and that he was of the opinion that he therefore was not allowed to send an affidavit to the Defense. The Prosecution did not submit Herr Eriksen's affidavit, a fact which talks for itself. The affiant Berghold, who is informed about all the transactions as a result of his activities in Oslo, answered in Ilgner Exh. 199 the questions in the following way: "I often overheard discussions in the course of which Dr. Ilgner decidedly warned the then Senator Otto, the chief of the Main Department national Economics at the Reich Commissariat against applying force against the Norsk Hydro and the Norwegians in general. Furthermore: Farben representatives and I were of the opinion that any kind of pressure has to be avoided during the negotiations concerning the concessions. Dr. Ilgner was of the same opinion ..."

Also the attitude of the Farben officials and especially Dr. Ilgner's attitude towards the executives from the Hoesch Hydro during the war are a proof of their friendly cooperation. In corroboration of this statement we refer to Ilgner's exhibits 196, 197, 199 and 267, all of them in book XIII. The fact that the Farben together with the Hoesch Hydro took great care to scrupulously observe the Norwegian Laws when founding the Nordisk Lettmetall and constructing its installations, also proves the concerted action of the two firms. (Ilgner Exh. 196, 197, question 4 and Haefliger Exhibit 37).

Regarding the attitude to the officials of the Banque de Paris, we particularly refer to the Ilgner Exhibit 260. The affiant Jacob Wallenberg, who handled all questions concerning the Hoesch Hydro in close cooperation with his father Marcus Wallenberg sen., states the following: I have never heard that in connection with the increase in the capitalization, the Farben exerted any sort of pressure on the French stockholders. Dr. Ilgner always behaved very correctly to my father. My father had a very good impression of him.⁸ The numerous documents submitted by the Prosecution show the active participation of the Banque de Paris in the handling of all questions, connected with the increase in capitalization, (see Ilgner Exhibits 226, 228, 231, 232, 239 and 240). From the same documents it can be seen to what extent the wishes and suggestions of the Banque de Paris with regard to the increase in capitalization were considered. Farben carried out all transactions in a fair and unobjectionable way.

For want of other evidence, the Prosecution finally refers to the decision of the Civil Court of first instance of the Seine Department in Paris of 31 May 1946 (Proc. Exh. 1312) to prove the pressure alleged by the Prosecution. Pursuant to this decision the sale of old Norak Hydro shares and of subscription privileges in French possession, were declared null and void. This decision of the Paris Civil Court is not based on a regular procedure; it was made upon request of the Public Prosecutor and the party, charged with the "Ueberfremdungsversuch" (alienation attempt) was not heard and had no chance to raise objections. The "statement" of the court that article 15, paragraph 3 of the Norak Hydro's statutes regarding the right to dispose of 43.05% of the subscription privileges has never been applied before 1941, shows, the inaccuracy of this procedure. The opposite is laid down in paragraph 5. Moreover the Farben or the names of any of the defendants are not mentioned once in this decision. Finally I also want to point out that the purchase of 75000 Norak Hydro shares in French possession is considered an especially aggravating circumstance, as it was already proven by us, Farben had nothing whatsoever to do with this transaction; it concerned the Norak Hydro shares acquired by the Dredner Bank upon order of the German Government.

In Trial Brief part II, page 4, the Prosecution is of the opinion that the owner's consent was of no importance, if the alleged action would destroy the

economic system of the countries concerned and would alienate the industry from its natural purpose. Also this argument is not conclusive in the case of Norway. We have already proven sub paragraph d) that the construction of the light metal installations of the Nordisk Løttemetal was the fulfilment of one of Norsk Hydro's old wishes. The statement which Herr Eriksen made to one of the assistants of the Affiant Frans during the war (Ilgner Exh. 197, answer 26d), also proves that already at that time the construction of the light metal installations of the Nordisk Løttemetal was considered an organic expansion of the working capacity of the Norsk Hydro. Ilgner Exhibit 197, question 15 and question 26c, and Ilgner Exhibit 209 also proves that the installations of the Nordisk Løttemetal have partly been set into operation by the Norwegians in the meantime, whilst the Manganese - and water-power installations are still under construction at the present time, but will be completed in the near future. These facts alone prove how well such industrial plants, as the Nordisk Løttemetal was supposed to construct, would fit into the economic structure of Norway. A destruction of the economic structure is therefore out of question.

Moreover, the evidence has shown that the materials, the apparatus and the machines which were used for the construction of the Nordisk Løttemetal's installations, were nearly exclusively supplied by Germany. The value of the apparatus and machines supplied by Germany amounted to 167 millions of Norwegian Crowns. (Ilgner Exh. 197, questions 9 and 10, Ilgner Exh. 193, page 6 and Buerger Exh. 37). Beyond that

Farben has supplied the Norwegians with most valuable technical informations which are now used by the Norwegians. With regard to the Prosecutions further claim that the Norsk Hydro through its financial interests in the Nordisk Løttemetal has sustained a loss of approximately 45 million Norwegian Crowns (transcript Engl. p. 9659, German p. 9782), the evidence has shown that the losses which the Norsk Hydro sustained, were a result of the bombing attack and of the order to shut down the plants which was issued by the official German agencies in consequence of this bombing. (Ilger Exh. 197, question 19). Farben officials and in particular Dr. Ilger tried in the course of many negotiations to obtain the consent from the official German agencies to obtain the payment of damages for the loss which the firm of Norsk Hydro and the two German partners of the Nordisk Løttemetal sustained as a result of the bombing attack and the order to shut down the plant. Towards the end of the war, they succeeded after having surmounted great difficulties. This was the first time that German authorities granted damages to a foreign firm. Owing to the events of the war, the payments could not be made anymore, neither to the Norsk Hydro nor to Farben (Ilger Exhibit 196, Book XLII, page 7, Ilger Exh. 197, questions 17 - 19, Ilger Exhibits 201 - 208).

The fact that the installations of the Nordisk Løttemetal in Norway were located within the sphere of influence of the Norsk Hydro and that only very few of the machines and apparatus which were delivered from Germany had to be dismantled on request of the German authorities towards the end of the war, (Ilger Exh. 197, questions 11, 12 and 15) has led to the result that the Norsk Hydro and Norway have today great values on hand which by far exceed the losses they have sustained then.

The affiant Franz who in the construction staff of the Farben had to handle the commercial matters for the Nordisk Lettmatal, stated on the basis of his expert knowledge that the total value of the Nordisk Lettmatal plants in Norway amounted to approximately 268 million Norwegian Crowns at the end of the war after deduction of war damages. On the other hand, Norsk Hydro has invested about 66 million Norwegian Crowns in Nordisk Lettmatal (Ilgner Exh. 197, questions 13, 14 and 26, transcript Engl. p. 5168, 8405 and 9659, German p. 5194-95, 8488 and 9782). Consequently the Norsk Hydro and the shareholders of this company actually did not sustain any losses.

We have shown by the evidence, submitted by the defense, that the "carefully worked out" plan of Farben and the German Government concerning the complete economic domination of Norway, as alleged by the Prosecution, is nothing else but a subsequent construction of the prosecution. Also its claim, that the final total result of the Norway-transaction was a German majority within the Norsk Hydro, does not conform with reality. Farben and the Bank der Deutschen Luftfahrt (Bank of German Aviation) never owned more than approximately 21% Norsk-Hydro shares. The German capital interest in the Norsk Hydro never amounted to more than 43%. (Ilgner Exh. 210, Book XII A, page 61).

k) Whilst, on the one hand, according to the arguments of the above paragraph l) no facts constituting an offense against the Hague Rules on Land Warfare have been proven, there is on the other hand a complete lack of proof

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for the criminal intent. The Prosecution has not submitted any evidence for the fact that Dr. Ilgner, when carrying out the Norway-transaction - as far as he was involved - intended to commit spoliation. On the contrary, the extensive evidence submitted by the Defense, shows that Dr. Ilgner wanted to carry out and actually carried out transactions which were fair and unobjectionable from the commercial point of view with the firms of Norsk Hydro and the Banque de Paris et des Pays-Bas with which Farben had been on friendly terms for a long time. The affiant Berghold (Ilgner Exh. 199, book XII A, page 29) whom we quoted already several times, stated thereto expressly the following: "During the discussion concerning the participation of German capital, Dr. Ilgner took the point of view that Farben was not interested in a German majority of capital".

The evidence has proven beyond doubt that no offenses against provisions of the International Law or even war crimes or crimes against Humanity were committed in the case of Norway.

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C. Count III

27. Slavery and Mass Murder:

General:

Dr. Jigner allegedly participated with the other defendants in the slavery program and mass murder

Ernst Pohl:

Affidavit Pohl, Tex. 1282 (NI 382), Book 67, Engl. page 39, German page 38;

File note Dr. Ruediger, Tex. 1311 (NI 839) Book 67, Engl. page 157, German page 285;

File note on conference with Dr. Michel, Tex. 1323 (NI 677), Book 68, Engl. page 64, German page 58.

Counter Evidence: Interrogation Jigner, Transcript, Engl. page 9564-9570, German page 9716-9721;

Cross-examination Pohl by the defense, Transcript, Engl. page 4227-4232, German page 4235-36;

Affidavit Fanslau, Jigner Tex. 171, Doc. 170, Book X, page 23;

Affidavit Dr. Ruediger, Jigner Tex. 170, Doc. 169, Book X, page 23;

Affidavit Scherzmann, Jigner Tex. 165, Doc. 164, Book X, page 1;

Affidavit Boehme, Jigner Tex. 166, Doc. 165, Book X, page 8;

Affidavit Troppenz, Jigner Tex. 167, Doc. 166, Book X, page 12;

Counter-evidence: Affidavit Kaminakas, Ilgner, Exh.168, Doc.167
(continued) Book X, page 14

Affidavit Bachelot, Ilgner Exh.169, Doc.168,
Book X, page 21.

It is not disputed that Dr. Ilgner was not in charge of a production -- but only of a purely commercial department. The Prosecution tried to prove that Dr. Ilgner knew about the measures which according to its opinion were connected with the slave labor program. The exhibit 1311 which was submitted as evidence, is a file note of the deputy Counter Intelligence Officer of Farben Berlin NW 7, Dr. Ruediger of 12 April 1944. The file note deals with the subject: Measures against slackers in plants. Ruediger's file note quotes a circular of the Secret State Police Berlin of 5 May 1944. This circular again refers to an ordinance of the Plenipotentiary General for Labor Allocation (GRL), namely to the so-called Ordinance No.13, of which the title only is quoted in the circular. Dr. Ilgner had no knowledge whatsoever of the Ordinance No.13 itself, just as it was unknown to Dr. Ruediger, since its regulations did not apply to the Farben Berlin NW7 organization (Ilgner Exh. 170).

The other incriminating document of the Prosecution (Exh. 1323) which is supposed to show Dr. Ilgner's connections with the foreign labor problem, is a file note of Farben Berlin NW 7, concerning a meeting with the Ministerialdirektor Dr. Michel in Paris of 9 June 1943. The passage cited by the Prosecution refers to the meeting during which the question concerning the transfer to the Southeast of plants which had been shut down and at the same time the participation of the French in the new Southeast European enterprises, was discussed.

This project which was never realized was amongst other things based on a suggestion of the Banque de Paris with which Dr. Ilgner negotiated in matters of Sakai Hydro at this time. The French were interested to again obtain a share of the Southeast-European trade. Ministerialdirektor Michel's remark concerning the so-called Sankool drive was made in a completely different connection and from the way Ministerialdirektor Michel presented this matter it could be seen that this drive concerned an agreement between two governments. (Transcript, Engl. page 9669-70, German page 9720-21).

The incriminating document of the Prosecution Exh. 1292 is an affidavit of the former SS-Obergruppenführer Oswald Pohl. All statements made in this document with regard to Dr. Ilgner are incorrect. Pohl saw Dr. Ilgner for the first time in his life in Nurnberg after his arrest. The same is true of Herr Fanklau who is mentioned in the affidavit Pohl (Ilgner Exh. 171). In the course of the cross-examination by the Defense, Pohl did not maintain the vague statements of his affidavit, but confirmed the Defense's statements to their full extent (transcript Engl. p. 4227-28, German p. 4255-56).

These three documents which have been submitted by the Prosecution, cannot prove the summarily levelled charge in any respect. They are completely insufficient and do not establish a crime committed as principal or as an accomplice.

Moreover, all these documents were refuted.

The only contact Dr. Ilgner ever made with foreign workers was caused by the fact that in 1944 a few foreign artisans were by some plants put temporarily at the disposal of Farben Berlin NW 7 organization for the construction of huts at places of relocation of factories. For the same purpose a few Lithuanian refugees worked at Farben Berlin NW 7 after 1944. The Ilgner Exhibits 165 - 169 amongst them also an affidavit of a Lithuanian and of a Frenchman show in what an excellent and really exemplary manner Dr. Ilgner took care of all these persons.

Thus we have proven that Dr. Ilgner behaved in an exemplary manner towards the foreign workers, if he in exceptional cases came into contact with them and in the only instance which we mentioned above. He took care of them like a friend or father. Thereby it is proven: On principle Dr. Ilgner had nothing to do with foreign laborers. If he came into contact with them he treated them in a friendly and fair manner. Since Dr. Ilgner never had heard of any bad treatment of foreign workers within Farben plants, there was no reason for him to intervene.

Concerning the question of the division of labor within the Vorstand and the responsibility of the individual Vorstand members, I am referring to the statements of Dr. von Metzler, Attorney-at-Law.

D. Count V:

38. Common plan or conspiracy:

Pursuant to the decision of the Tribunal the assumption of a conspiracy under the counts II and III of the indictment is precluded. The conspiracy charge therefore is only limited to count I.

As we have proven in paragraph 21 of this Closing Brief, Dr. Ilgner had no knowledge of Hitler's aggressive plans. He was not connected with any defendant for the purpose of carrying out or preparing plans of aggressions or for participating in them. Dr. Ilgner's entire aim was the preservation of peace, as it has been proven.

In view of this factual and legal situation an assumption of a conspiracy is impossible, quite apart from the fact that the prerequisites as defined in the Control Council Law 10 and according to the judgment of the IMT are not proven. For the rest, reference is made to Prof. Dr. Wahl's basic arguments.

Certificate of Translation.

We hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of the document : Closing Brief Ilgner.

Nuremberg, 18 June 1948.

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" 31 - 39	Jack Markheim AGO D 230 019
" 40 - 105	A. Ehrmann ETO 20 116
" 106 - 110	G. Lemmer ETO 20 123
" 111 - 122	J. Weismann ETO 35 270
" 1 - 34 (Warle)	Jack Markheim AGO D 230 019
" 25 - 41 (Warle)	E. Oettinger AGO A 446 369

Appendix to Lecture-Brief Dr. J. J. J. J.

Which were the causes for the establishment of Foreign
Exchange Control, Export Promotion, Work Procurement
Measures and the Efforts for Autarky in Germany before
and after 1933?

Opinion

by

Dr. Ed. Verle

South German Institute for Economic Research

Munich 13, Vinzerstrasse 53

Munich, 21 March 1940

signed Dr. Edward Verle

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A. The automatic mechanism of adjustment in old world economy, its operation its foundation and its collapse.

World Economy which in the epoch prior to World War I was steered by the gold cover mechanism was a creation of human mind and human art or organisation of the highest perfection. It was based on a voluntary division of work within an indivisible world of nations which, in accordance with the law of comparative prices, contributed its highest share in economic achievement, for the common benefit of all people. Costs, prices, trustworthiness for credits, quality of the goods produced and other objective properties, rather than some kind of political despotism determined the balance of trade, the balance of payment, assets of gold and foreign currency with covering value, and finally the status of a nation as a creditor or debtor. This system combined utmost liberty with highest economy to a perfect degree. This form of organisation was so highly developed that, when absolutely effective, it was hardly noticed as such, but rather as a natural and self-evident order. Shortly after the first world war it turned out that this had been a disastrous error.

How did this adjustment mechanism of world economy, which was regulated by prices and gold fluctuation, work?

If, for instance, the foreign currency demand of a country because of increased imports exceeded the foreign currency assets at that time, consisting of exports, services rendered and loans, the domestic rate of exchange would decrease, or - in case of an intervention by the Central Bank - gold holdings decreased, causing a deflationistic effect (if the rules were strictly adhered to). In both cases the import became more expensive, the consequence being that the domestic demand for foreign goods

declined, thus automatically throttling import, at the same time the deterioration in the rate of exchange or the deflationistic transfer of gold respectively led to a reduction in prices of domestic goods and thereby to an increased ability to compete with foreign countries, or, in other words, this led to an automatic furthering of export. This export-promoting decline of prices became even more intensive when the foreign countries, adhering to the rules of gold currency, did not sterilize the gold which they had received from the country in question, but utilized it for the expansion of loans, therefore creating an inflationistic tendency. Not only did the domestic demand for foreign goods decrease as a result of the deflationistic policy at home, but the demand for domestic goods also decreased when profits and wages (f.i. because of taxes) declined more rapidly than the prices of goods, and an incentive for increased export was created as a consequence of this general recession of domestic consumption. The automatic adjusting effect was therefore complete, provided that the rules were adhered to -; The tendency of deflation on one side was offset by the tendency of inflation on the other, throttling of import and furthering of export on one side were offset by a promotion of import and restriction of export on the other. In the final analysis, the economic structures at home and abroad were coordinated with the problem of adjusting the balance of payment.

It is quite obvious that such a highly complicated mechanism must be highly susceptible to overstressing, false operation and interventions alien to the system. Like other highly developed forms of organization in free economic life - such as the modern stock exchange - its functioning was based upon certain indispensable prerequisites. At the stock exchange, objects amounting to millions are transferred in a few moments

by a few shouts and gestures. This is only possible if all people admitted to the stock exchange strictly adhere to the rules existing there, even though this might involve heavy losses or even bankruptcy of one's own enterprise. A pre-requisite heretofore is a strict sense of professional honor as well as absolute confidence in the fact that all the other businessmen at the stock exchange will also abide by the rules.

World economy, too, could also only function under certain prerequisites. These were in particular: intact morals in accordance with international law, the implicit will of every country for a peaceful cooperation with all other countries and to act according to the rules of gold mechanism, participation of all countries, in this system and finally the unperturbable mutual confidence that all participants will under all circumstances strictly obey the existing rules. The system will be subject to serious disturbances if and when individual nation or families of nations no longer recognize the then existing rules to their full extent, or if political interference encroaches upon the course of credit and trade relations of world economy, which course is determined by exclusively economic purposes. It will be blown up if non-economic influences go beyond the adjustive power of the mechanism and if thereupon the participants, allegedly for reasons of self-preservation, no longer abide by the rules. Exactly that happened - as will be shown - after World War I, thereby destroying the solidarity of world economy which had been so advantageous for all concerned.

It can well be understood that this fact was not always fully realized by those who - only to a secondary degree - were the victims of the dramatic events of the world economy prices (1929 - 1932).

The vehement mutual accusations in those troubled days, to all intents and purposes remained on the surface, they frequently mixed up cause and effect and obviously overestimated by far the country's freedom to act because the countries for some reason or other had incurred in their trade balance. The experiences of the last thirty years have shown again and again that all countries participating in world economy and subject to similar structural foundation as well as similar economic situations made, - as it seems for reasons of necessity - Almost the same attempts for settlement. This could not be a coincidence.

B. The reasons for the failure of the automatic adjustment mechanism after World War I.

Of the avalanche of effective causes only the most essential can be quoted here.

1. The change of structure of production and sales caused by the war.
To begin with, the war and the blockade decisively changed the structure of production and sales in world economy, which, until that time, had grown organically. Countries which formerly had only produced raw material or foodstuff, while exchanging them against finished products from large industrial countries, were industrialized of necessity during the period of blockade from their former market. They were able to do so because they could employ their high war profits for that purpose.

B. The conversion of the creditor-debtor position through war and post-war agreements.

The war and post-war agreements furthermore resulted in a revolutionary conversion of the financial position of the former creditor and debtor countries.

This is true for the situations between the Allies as well as between the victors and the defeated countries, in view of the stress on the organically grown international credit system which had been applied by Allied debts and Reparation debts which were alien to the system and which amounted to sums by far exceeding the adjusting power of gold mechanism, it is hardly conceivable today how anybody could believe that this stress on the system would be possible without thoroughly shaking its very existence. This can possibly be only explained by the fact that f.i. in Versailles not a single national economist of reputation was consulted. J.M. Keynes could only voice his warnings post facto (1921) at that time, however without any tangible effect. During the reparation negotiations after World War II it had already become commonly known that the transfer of political debts on a substantial scale from an economic point of view could not be carried out.

3. Commercializing of the reparation debts.

It was apparently an unsuitable attempt to correct the original mistake when it was tried in 1925 - 1931 to commercialize the German reparation debts. The influx of foreign loans amounting to billions (see table 1) most of which were moreover granted only for a short period, made it possible for Germany to reconstruct her production apparatus which had been weakened by the war, surrender of territories and inflation, however it burdened German economy with a debt which was much too high, because it had grown inorganically, that is to say politically, and which, under normal conditions could neither be amortized, nor could interest be paid on that debt. Unless the other nations would have been willing to accept German goods and services to an accordingly increased degree.

4. Structural Origin in World Economy as a Result of Political Liabilities.

The economic and social political structure of the countries concerned could only slowly and incompletely be adapted to the forcible, and politically conditioned conversion of former debtor countries into creditor countries, and vice versa, as a result of the war and post-war agreements. This conversion caused tensions which shook the structure of the entire world economy. The balances of payments shown below show with drastic clearness the development of the world economic disturbance - triangle USA - Germany - France, and how its radiation affected all the rest of the world.

The United States, which prior to the war had been on the threshold between a capital receiving to a capital relaying debtor country, and which therefore had a strongly activated balance of trade, being in a status of expansion in her agricultural and industrial policy, and which in the course of a few years of war had become the main creditor of the world, could not, when peace time conditions were restored, carry out the change which came just as suddenly, into a creditor country, and a country which granted loans, and which had a passive balance of trade, in view of its entire structure of production and social policy. The economic structure of the debtor country which had developed organically prior to the war became also predominant in the sphere of production after the war despite the completely changed situation of finance policy, and is most clearly expressed in a strong activity of foreign trade. The influx of sum amounting to billions from Europe, and deriving from interest payments and political transfers did therefore, in actual fact, not go beyond the financial sphere. The continuance of active foreign trade combined with increasing revenues from interest and political payments results in a permanent disturbance in the current balance of payment of the United States;

the surplus was partly stored up in gold, partly re-issued in the form of loans, insofar as they were not sterilized in the form of increasing storing of gold, or floated back to Europe in the form of loans and the quickly increasing travel expenses of Americans, they contributed an essential share in the inflation of the Stock Exchange level which became noticeable long before the boom in 1927 - 1929.

Balance of payments of the United States in Million Reichsmark *)

	<u>1908/13</u>	<u>1927</u>	<u>1928</u>	<u>1929</u>	<u>1930</u>	<u>1931</u>
Foreign trade	+ 2,020	+ 2,447	+ 3,568	+ 2,720	+ 3,363	+ 1,549
Services and traveling	- 1,450	- 3,022	- 3,950	- 4,378	- 3,967	- 3,245
Interest	- 1,050	+ 2,179	+ 2,242	+ 2,372	+ 2,586	+ 2,301
Political payments	—	+ 865	+ 869	+ 1,469	+ 1,012	+ 474
Gold and foreign currency	+ 10	+ 646	+ 1,142	- 504	- 1,075	+ 697
Transfer of capital	- 470	- 3,115	- 3,871	- 1,079	- 1,919	- 1,776

*) + Net payments received, or balance of gold and foreign currency transfers, or balance of capital received, respectively.

- Net outgoing payments, or balance of gold and foreign currency imports, or balance of capital transferred, respectively.

France, which had been a creditor country and a country that issued loans prior to the war, intensified this status after having successfully carried out its currency stabilization, by the increasing surplus from political payments and by American traveling into the war territories and, unlike the United States, quickly developed into an acute disturbance factor of the first grade in that she did not lend out the surplus of her balance of payments, in the consideration of the unhealthy credit situation, but rather converted it into gold, and stored it up.

Balance of Payment of France, in Million Reichsmarks *)

	<u>1908/13</u>	<u>1927</u>	<u>1928</u>	<u>1929</u>	<u>1930</u>	<u>1931</u>
Foreign Trade	- 580	+ 20	- 550	- 1,350	- 2,130	- 2,180
Services and traveling	+ 780	+ 1,200	+ 1,470	+ 1,580	+ 1,500	+ 1,140
Interest	+ 1,410	+ 370	+ 530	+ 810	+ 690	+ 520
Political payments	-	+ 440	+ 600	+ 750	+ 800	+ 220
Gold and foreign currency	+ 40	- 2,510	- 2,660	- 570	+ 1,220	- 2,000
Movement of capital	- 1,550	- 480	+ 810	- 720	+ 370	+ 2,280

*) See above.

But also in the case of those nations who, as former creditors, had suddenly become debtors the historically grown structure of production economy and social policy proved to be by far stronger to begin with than the newly established financial situation resulting from the war and post-war agreements. In Germany the pre-war standard of a debtor country and a country that issued loans was temporarily restored after the inflation and the passive balance of trade including the payment of interest and political transfers was financed by the utilization of foreign loans which had been readily granted.

Balance of Payment of Germany, in Million Reichsmarks *)

	<u>1908/13</u>	<u>1927</u>	<u>1928</u>	<u>1929</u>	<u>1930</u>	<u>1931</u>
Foreign trade	- 1,470	- 2,960	- 1,285	- 44	+ 1,563	+ 2,782
Services and traveling	+ 550	+ 512	+ 430	+ 513	+ 323	+ 152
Interest	+ 970	- 345	- 553	- 900	- 1,000	- 1,300
Political payments	-	- 1,594	- 1,999	- 2,501	- 1,699	- 992
Gold and foreign currency	- 200	+ 452	- 931	+ 185	+ 120	+ 1,653
Capital transfer	+ 150	+ 3,925	+ 4,295	+ 2,667	+ 793	- 3,295

*) See above.

The effect of the tensions in world credit policy which had thus undergone evolution in the course of a few years were intensified moreover by the fact that

the small West European creditor countries followed the French example while the Central and East European debtor countries followed the line of the German development. While the outbreak of the crisis was prepared, emanating from this American-French-German disturbance center, and its outskirts England, which suffered considerably from her too severe stabilization, remained unaffected to begin with. The picture of the British balance of payments does not exhibit any typical changes, and only the British private banks which uncautiously intervened in the sphere of disturbance by mediating short noticed loans are to blame for it that the first shock of the outbreaking panic on the credit market eventually was directed against Great Britain and her currency.

Balance of payments of Great Britain, in Million Reichsmarks *)

	<u>1908/13</u>	<u>1927</u>	<u>1928</u>	<u>1929</u>	<u>1930</u>	<u>1931</u>
Foreign trade	- 3,050	- 7,936	- 7,280	- 7,540	- 7,942	- 8,330
Services and traveling	+ 2,060	+ 3,319	+ 3,266	+ 3,399	+ 2,366	+ 3,025
Interest	+ 4,410	+ 6,394	+ 6,435	+ 6,436	+ 5,818	+ 3,914
Political payments	—	- 133	+ 3	+ 54	- 29	+ 50
Gold and foreign currency	- 10	- 29	- 34	+ 164	- 46	+ 549
Capital Movement	- 3,410	- 1,613	- 2,390	- 2,411	- 470	+ 1,532

*) see above. (Cf. also Charts I and II)

The compilation of international balance of capital shows a still more concise expression in figures as to the extent of this reshuffling of the financial structure and the changed creditor - debtor relationship.

Summarizing the balance of the short- and long-noticed foreign assets, or liabilities, respectively, and that of the monetary gold and foreign currency holdings, and neglecting political obligations, a purely commercial activation of her financial situation from minus 9 billion to plus 62 billion Reichsmarks can be derived, that is to say an increase of approximately 70 billion Marks.

in the case of Germany a resalvation from plus 33 billion Marks to minus 16 billion Marks i.e. approximately 49 billion Marks, and in the case of France, as a result of the loss of the major part of its pre-war loans, also a deterioration from approximately 36 billion Marks to approximately 21 billion Marks, i.e. by 15 billion Marks approximately. In the case of Great Britain the balance of capital does not exhibit any substantial change just as in her balance of payment (Cf. Chart 2).

The world equilibrium of credit and trade policy before the war, with the exception of British predominance, was stabilized by the fact that the European creditor nations did not only obtain the raw materials and food products from colonial and agricultural debtor countries, in exchange of their industrial goods, but over and beyond that accepted them as interest and redemption payments for the invested loan capital. This original equilibrium which, as a consequence of excessive extension of raw material and agricultural production, and the changed creditor-debtor situation of the Central European and U.S. markets had become thoroughly disturbed after World War I, collapsed instantaneously when the adjustment process of the structures of balances of payment, which had just been initiated, clashed with the recession of the regular wave of conjuncture (1929).

5. The Influence of the Structural Crisis on the World Economic Conjunction.

The conversion of the fundamental trend of interest and capital flux from Europe to America which only temporarily was superimposed by the opposite flux through America's granting loans to Europe would have led to crisis-like congestions of goods exchange quite apart from the normal fluctuation of business. This congestion is most violently felt on the raw material markets, and in view of the large influence of changes in the

peaks of demand on the formation of prices were bound to lead to an extensive and lasting lowering of the price level. The thus conditioned fact, that the overseas raw material producing countries and the European agricultural countries had to carry their goods exchange as liabilities, whereas in their position as debtor countries, they normally would have required an export surplus in order to keep up with their current capital and interest obligations, could, under these circumstances, only be offset temporarily by utilising their monetary gold and foreign currency reserves. As the slump in raw material progressed and the volume of exports and the reserves for reimbursement declined, the currencies of most overseas raw material producing countries of a colonial type were the first to be detrimentally affected. Then the crisis went on, smoldering in the East and South-East European outskirts, where, despite French attempts of support, it forced weaker countries to abandon the gold standard. (Of. Chart III). It finally flashed like panic to the centre of disturbances of World Economy -- i.e. Germany and the United States -- after having heavily shaken the rate of the English Pound and the Scandinavian currencies on its way.

The fact that the European debtor countries obtained the larger part of their import needs in food and industrial raw material from overseas countries while selling the vast majority of their industrial products in Europe, did not permit a unilateral settlement of the problems of credit and trade policy but included for reasons of necessity, the larger part of European and overseas countries in their fight for a reformation of trade policy relations. The attempt of the European group of debtors, under the leadership of the principal debtor, Germany, to bring about an adjustment in credit policy in an

indirect manner is symbolized by the struggle for a reformation of the structure of trade policy which ran parallel to the increasing gravity of the international currency situation in 1929 to 1931, and to which a temporary end was set by the outbreak of the crisis. The quick increase of assets of the most powerful members of the debtor group got the weak debtor countries as well as the small creditor countries in Europe into trouble while the throttling of liabilities of the raw material producing countries overseas did the same to the non-European debtor countries. The loss of assets in the balance of trade in the first instance rendered the overseas raw material countries, as well as the weak agricultural countries in Europe, incapable of fulfilling their capital and interest obligations, after their gold reserves had been exhausted. This deficit in capital receipts conversely affected the European creditor countries all the more since the attack of the most powerful industrial debtors on trade came at the same time from the commodity side, and threatened to upset their balance of payment.

The attempt of Central European debtors to fulfill their commercial capital and interest obligations only led to jeopardizing the capital which had been invested by their creditors in other parts of the world. France, in her effort to obtain long term extensive political payments from Germany incurred a devaluation of her private claims in East-European countries, and the United States insisting on payment of war debts led first of all to the most important consequence, i.e., the loss of a large part of her commercial investments in South America. The capital investments of England and of the small creditor countries, too, were extensively affected thereby.

6. Shaking of the Fundaments of Confidence.

The desire for co-operation of world economy was furthermore strongly shocked by the shaking of the fundaments of confidence. The experience that blockade, boycott, protective customs policy, devaluation of currency, and other forms of economic warfare were used in international conflicts, and might be used again, caused most countries to rely no longer on world economy under all circumstances, and for the sake of security, rather to adapt themselves to their own economic sphere, or to the economic sphere which was under the domination of a friendly power. (Ottawa Preference System, Goldblock, Good Neighborhood Policy of American States, etc.)

Innumerable examples could be quoted for such nationalistic economic policy. They all have in common that individual nations, or families of nations, sacrificed the business community which had been in existence until that time, in order to exclude the disadvantages of such policy for their own economic sphere. If every nation thinks only of maintaining its own standard of employment, and its international competitive efficiency, then, of course, the most fundamental prerequisites will be taken away from an adjustment-mechanism of world economy.

7. Non-Compliance with the Rules of the Automatic Adjustment Mechanism.

The principal cause for the failure, and the eventual breakdown of the adjustment-mechanism in world economy was, apart from interference by non-economic circles, the non-compliance with the rules. This statement will be briefly substantiated by the following examples: Russia, since the revolution (1917), did not consider herself bound in the least by the mechanism of world economic credit- and trade-relations. The old credit obligations from Tsaristic times

were not acknowledged. Insofar as she took part in international economic transactions, this was frequently done for political rather than economic considerations. She occasionally utilized her economic power to carry out her plans of world revolution by throwing, for instance, wood or grain on the world market, and applying dumping methods.

The United States, although they had become the largest creditor nation after World War I, were the first country to prefer autonomous business policy to credit political adaptation, in that they did not after the war, use the influx of gold and foreign currency from Europe for the expansion of credits, as would have been required by the automatic gold mechanism, but sterilized the incoming gold, and thereby paralyzed one of the most important arms of the lever of gold currency mechanism. As early as 1924, in the 10th Annual Report of the Federal Reserve Board (Covering Operation for the Year 1923) Washington, the request was made that the domestic stability rather than gold transfers or gold assets should be chosen to determine the guidance of currency policy. They were guided in their consideration by the fact that compliance with the mechanic rules which, of necessity, would initiate increased imports and decreased exports, would entail consequences which were highly disadvantageous. That is why they tried, on the contrary, to shield simultaneously their agriculture, their raw material production, and their finishing industries by high protective duties, and to maintain their favorable trade balance, inconsistent with the rules. When the structural tensions within the creditor-debtor nations in connection with the end of the conjuncture in world economy (End of 1929) were discharged in the world credit crisis (Summer 1931), these countries (and other

creditor countries as well) tried to save what could be saved, and withdrew their credits which, for the major part, had been granted on short term, from the debtor countries, at lightning speed. They thus drowned the debtor countries in a boundless crisis of transfers, and eventually caused the total collapse of the world credit system. However, also after the crisis, the creditor countries did not start to carry on a policy of inflation, in accordance with the rules, but continued to pursue a deflationistic policy. They thus deprived the debtor countries, after all gold and foreign currency assets had been exhausted, of the only possibility to discharge their obligation in interest and capital in the only possible way, that is by payment in goods and services. In April 1933 the United States, in abandoning the gold standard (in January 1934 devaluation of the Dollar to 59 % of the former par value), followed in line with Great Britain which, for the same consideration, had, as early as September 1931, been the first country to separate its currency from the gold standard.

Great Britain at that time abandoned her deflationistic policy which she had pursued since the stabilisation after the first world war, and allowed the value of the Pound in foreign countries to adjust itself to the price situation on the world market. The decrease of the domestic value of the Pound, by way of increased prices, lagged behind its devaluation abroad so that Great Britain was ahead of others in its foreign currency which she received for her exports.

In September 1936 the Goldblock countries on the European Continent followed suit, after they had been forced to devalue, owing to the intensifying economic crisis, and as a result of the deflationistic policy they had pursued.

Credit policy of domestic economy was thus separated abruptly from currency policy in foreign trade, whenever it seemed to serve national interests.

It was only tried to avoid the consequences of deflation, if possible, i.e., decrease of production, declining prices and unemployment, with its social effects on one's own country.

That group of nations (mostly creditor nations) which followed the American example of devaluation, and the degree of their devaluation as against the former par value, can be seen from Chart 4.

8. Devaluation of currency in creditor countries.

The creditor countries to all intents and purposes did not have the alternative between the two radical means of adjusting their balance of payment, i.e., devaluation of currency, and foreign currency control. Devaluation would not have stopped the withdrawal of capital, even though the note-issuing banks ^(Notenbanken) might have pursued the policy to issue all reserves available from the balance of payment. The assets which could be mobilized were too small to support the value of currency, as covered with the liabilities which burdened the currency and the balance of payment, so that they could not be left uncontrolled in the actions of supply and demand.

In contrast to England which, as a strong creditor country in 1931, had only to face the withdrawal of short term loans (Crisis of liquid assets), Germany, for instance, was actually deeply involved in debts at that time, as a result of reparational obligations. In addition, the English debts in foreign countries were, for the major part, transacted in Pound Sterling, so that in case of a devaluation they were bound to decrease in value, from the gold cover point of view. German foreign debts, however, for the major part consisted of debts in foreign currency, so that they could only have increased in value, in case of a devaluation. German imports were rendered more expensive by devaluation, because they came from spheres of foreign currency.

while English imports could be paid within their own large currency block, i.e. in devaluated Pounds, Germany - in contrast to England and the United States - furthermore lacked sufficient active funds of gold and foreign currency, it was furthermore psychologically affected by the total inflation it had just overcome, (Inflation Psychosis), and this fact had to be taken into consideration.

The question of devaluation has, in this essay, deliberately been treated in so much detail, in order to show, by way of an example, that it is useless to render a collective judgment on the conduct of any country during the world economic crisis, and that the economic policy of a country can only be reasonably interpreted if one takes into account its particular structural and business situation.

Although one might be of the opinion that Brüning's policy of keeping the Reichsmark stable, with its deflationistic effects (almost 6 million unemployed), was wrong from an economic and political point of view, it cannot be denied that there were in it, a couple of well founded reasons, and that it strictly adhered to the rules of world economy which prior to that time had been in existence. Probably it would have been better for Germany and the world if German economic policy in 1931/32 had followed the British procedure, and had abandoned the orthodox economic policy. This, however, would have rendered the situation untenable for the West European countries in the Gold Block. Now, after German currency policy at that time had been pursued in line with that of the Gold block countries, the consequences resulting therefrom were: Foreign currency control, and a change into bilateral trade policy had finally become unavoidable.

C. Counter effects of the structural and business crisis of World economy on the internal and external German economic situation.

The role which Germany played in the political and economic re-organization of international relations after World War I was of a purely passive nature until after 1933. It therefore had to put up with the deterioration of its economic power through loss of territories (at home and overseas), through reparational obligations in kind and in money, and through the "most-favored nation" clause which had unilaterally been imposed on it (until 1925). It therefore changed from a creditor country with approximately 23 to 25 billion Reichsmarks investments in foreign countries, to a debtor country. Even though the political reparational obligation was alleviated in certain stages (Young- and Dawes Plan, Lausanne Agreement), was partly transformed into a commercial debt, and later rescinded altogether, there can still be no doubt about it that both its balance of payment and its internal economic structure was decisively changed thereby. The influx of tremendous loans from foreign countries in the course of placing the reparational debt on a commercial footing permitted Germany the rationalization of its production machinery, to be sure, and thereby paved the way for the restoration of a sound basis in internal economy, however the necessary conversion of its economy into that of a debtor country with active balance of trade was temporarily deferred through these actions. (cf. Chart 5). Even a temporary increase of its gold and foreign currency stocks was brought about, quite contrary to the rule. (cf. Chart 6).

The, at first, very agreeable effect of foreign loans which most had readily been granted, was, since the loans for the major part had been granted on short term, offset by the fact that Germany thereby encountered the extremely dangerous situation of a debtor country which had become deeply involved in debts which were to be repaid in a short time,

particularly in view of breaches of confidence in international credit relations, which was always possible. Germany's foreign liabilities, in the middle of 1930, amounted to a total of 24,6 billion Reichsmarks of which no less than 16 billion Reichsmarks were short dated debts. (cf. Chart 1)

The structure of German foreign trade, too, was highly susceptible to disturbances in world economy because it was entirely aligned to a free disposal of incoming proceeds of foreign currency, Germany being a country with little raw material resources, and with a basis too low for its own food supply, had to rely on import of raw material and food, even before World War I. After the World War this dependence on imports was even increased. Germany obtained the foreign currency for her surplus imports from overseas countries from her export surplus in trade with Europe. (cf. Chart III). German foreign trade therefore - in contrast to countries with larger supplies in their own country (USA, Russia), or in their own sphere of currency (Colonial powers, currency blocks) - was a basis for its very existence rather than an additional source of wealth. Statistics concerning foreign trade do not clearly reveal this fact because the exchange of goods with colonies or with countries of the same currency sphere are listed as foreign trade. Nevertheless, Germany's close interlocking with world economy can be seen from its high share in world trade (cf. Chart 7) and from its high foreign trade quote per capita, above all in comparison with the United States. (cf. Chart 8).

After the outbreak of the crisis of world economy in the Fall of 1929, Germany concluded its period of rationalization with foreign loans and changed - in accordance with the adjustment mechanism of world economy -

into a deflationistic policy. To begin with, it was successful in foreign economy, as can be seen from the increasing assets in foreign trade, in the years 1929 to 1931 (from 4.36 million Reichsmarks, to 12,872 million Reichsmarks). However, it had to pay for the compliance with the mechanistic rules with an extraordinarily serious deflationistic crisis of its internal economy. The index of production between 1929 and 1932 declined from 100.9 to 58.7, unemployment at the same time increased from 1.9 millions to 5.6 millions (cf. Chart 9).

However all prospects of success were taken away from these efforts to adjust economy, by the panic-like withdrawal of capital on the part of foreign creditors, in the course of the international credit crisis (Summer 1931).

It is true that the Reichsbank - in accordance with the rules - raised the rate of discount from 5 per cent to 16 per cent finally, between 12 June 1931 and 1 August 1931. However, in view of such a tremendous slipping of the ground under the entire international credit relations - caused by outside actions - the discount screw was bound to be ineffective.

Through a moratorium and later through transfer agreements, the exodus of capital and the irregular withdrawal of credits could be restricted, and the inconsiderate mobilization of the last gold and foreign currency reserves could, to be sure, temporarily convey the impression of a process of financial reconstruction in accordance with the mechanical rules (cf. Chart 6), however a true settlement could not be achieved in this way, in view of the German situation.

The crisis thus dragged on in an ever increasing manner, until the fall of 1932. However all sacrifices, such as mass unemployment, reduction of wages and salaries, increase of taxes, and others, had been in vain.

The attempt to achieve the adjustment of the balance of payment through the method of deflationistic policy was bound to fail, because, at that time, there was among the creditor countries neither the desire for a credit expansion policy in their own countries, in accordance with the adjustment mechanism, nor was there the desire for increased purchases of German goods. German export, on the contrary, was in addition inhibited by devaluation of currency, establishment of preference systems (Ottawa), import control licenses (Australia) and declining purchasing power of the buyer countries. German exports as a consequence thereof declined from 13,403 Million Reichsmarks (1929) to 4,071 Million Reichsmarks (1933). The growing of considerable production capacity for export, resulting from the deflationistic policy, therefore turned out to be senseless afterwards, and only intensified the crisis of internal economy.

Although the German deflationistic policy was thus ineffective for the adjustment of the balance of payment, the same cannot be said of its influence on the development of Germany's domestic politics, which soon took a dangerous course destroying the social setup. Through the orthodox application of deflationistic policy the wreckage of people thrown out of their occupational career, i.e. former soldiers of the regular army during World War I, and the members of the middle classes who were dispossessed by the inflation, was augmented by additional millions of workers, farmers, craftsmen, and professional people who had been expelled from employment, and who were deprived of their livelihood. Believing that they were finally deprived of any prospects for their future they represented a latent revolutionary army which could easily be radicalized.

The failure of deflationistic policy in accordance with the old rules, within a world that had already abandoned these rules, thus led in its most important consequence to politically weakening the circles until that time governing in politics, administration,

science, banking, and economy, and -carried by the dissatisfied and desperate masses of millions- helped National Socialist into power. In view of the threatening development going on in the East, this example should be a warning not to practice orthodox rules of economy regardless of political consequences.

D. Provisional German Defense Measures

In the fall of 1930 the foreign creditors, as a result of the international confidence crisis, began to withdraw their short dated assets from South America, some South East European countries, Austria, and Germany. After the bank crisis (Collapse of the Austrian Credit Institute) in early summer 1931, these withdrawals assumed a panic-like character. In this manner almost all debtor countries were caught in a transfer-crisis, most South American countries as early as 1931/32, the South East European countries in 1932/33.

Germany, in mobilizing its surplus foreign currency from its balance of trade and services (amounting to a total of approximately 5,4 Billion Reichsmarks in 1930 and 1931), and in mobilizing its gold and foreign currency reserves, could defer a transfer moratorium until June 1933. The gold and foreign currency stock of the German banks of circulation was thereby decreased from 3.174 Billion Reichsmarks (June 1930) to 347 Billion Reichsmarks (June 1933) (according to V.z.K. 1934 Page 25).

Foreign Assets decreased from

July 1930 to July 1931 by 3 Billion Reichsmarks

July 1931 to Sept 1933 by additional 9 Billion Reichsmarks,

i.e., a total of 12 Billion Reichsmarks (cf. Chart 1).

In addition, the "Miscellaneous Foreign Assets" (securities, participations, real estate) decreased by 3,6 Billion Reichsmarks at the same time. Germany furthermore, in the years from 1931 to 1933, transferred a total of approximately 2,8 Billion Reichsmarks,

for payment of interest.

As a matter of course these high repayments resulted in a serious transfer crisis, although the raising of funds did not cause any difficulties, a significant circumstance in view of the German situation at that time.

In order to defend the exodus of capital and the irregular withdrawal of credits, Germany was compelled to "Standstill Agreements" (Moratoria) with the creditors of its short dated foreign debts (at first for the period of 1 September 1931 to February 1932, which period was later constantly extended).

It is worth mentioning that the Foreign Bank Consortium granted supporting credits only under the proviso that the exodus of capital be effectively prevented. This proviso was one of the factors leading up to the introduction of authorization for foreign payments, and to the obligation to give up foreign currency, the first stages of foreign currency control in Germany.

At first, German importers received monthly maximum amounts, within the scope of general foreign currency licenses (based on their imports from July 1930 to June 1931) which, in the beginning were allocated 100 per cent. As the balance of payment deteriorated these quotas had to be reduced steadily (cf. Chart 10) until, in June 1934, they went down to 5 per cent.

In the course of 1933 and 1934 the import demand increased, owing to expensive work procurement policy which had been initiated meanwhile, while exports were still more depressed as a result of devaluation of currency in the competitive countries, and as a result of the deteriorated purchasing power of the buyer countries which had been weakened by the crisis. (From 13 403 Million Reichsmarks in 1929 to 4 157 Million Reichsmarks in 1934) (cf. Chart 5.) Thus for the first time, since 1920 the balance of foreign trade became passive (284 Million Reichsmarks).

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The surplus resulting from trade and services thereby decreased from 3 228 Million Reichsmarks (1931) to 979 Million Reichsmarks (1933) and the surplus from the balance of payment from 1 040 Million Reichsmarks to 132 Million Reichsmarks (cf. Chart 11).

The progressive exhaustion of the reserves from the balance of payment finally compelled Germany - like many other debtor countries - to declare a partial transfer moratorium on 1 July 1933 for interest on long dated debts, and eventually a total transfer moratorium on 1 July 1934. The interest for the short dated Standstill credits were fully transferred even at that time.

Moreover, as a result of foreign currency control which had meanwhile been introduced in the South East European countries, the Eastern type of settlement agreement developed. In those countries, a few Western creditor nations (France, Belgium-Luxembourg, Italy, Holland, and Switzerland) started to balance their claims against their obligations from imports. They were therefore the first to introduce the thesis of reciprocity into the Economic Struggle. Germany was bound to follow in line with this procedure of other creditors if it did not want to jeopardize its frozen export assets in those countries (200 Million Reichsmarks in early 1933). De-freezing of these assets was carried out as follows: A certain percentage of German imports from those countries had to be used for the repayment of debts. It was the purpose of this agreement, not to let the active balances which had been accomplished from transactions with such country be used for imports from other countries, unless the goods and interest claims of the contract partner had been satisfied.

From 1934 on, Germany also became a victim among the countries which had been affected by this procedure. The Western countries

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believed that they had to consider the reduction of the German foreign exchange quota as a discrimination against their export to Germany and threatened with counter measures. Thus Germany had to conclude clearance agreements of the so-called Western type with these countries (France, Belgium-Luxembourg, Italy, Holland, Norway, Sweden, Finland, Spain). These countries were, in this way, to be put in a position to export additional merchandise to Germany in excess of the German foreign exchange quota. The German importer paid the equivalent into a special account at the bank of issue of the exporting country. The foreigner could thus pay for German merchandise. By the application of the so-called Sweden clause the total proportion between export, import and German export balance was to be stabilized. In this arrangement Germany was interested in so far as in this way, it had a certain prospect of maintaining her traditional export surplus with regard to these countries. When in 1931 the import by way of these special accounts increased very much and foreign assets increased in excess (to 500 million RM at the end of September 1931) they were replaced by a general clearing of the Eastern type amounting at a partial seizing of the German active balance for merchandise and interest debts owed to Western creditors ("settlement of payment").

In spite of the intensified supervision of import (the first supervisory offices had been established in the meantime) the trade balance became, in the summer of 1931, more and more negative in an alarming way. On 25 June 1931 the Reichsbank therefore started to establish an allocation in proportion to the daily foreign exchange requirements and receipts. But this emergency measure was also unsuccessful as the German importers owing to the increasing import requirements circumvented this regulation by imports via special accounts (with the Western and Northern countries) or clearing accounts (with the Eastern countries).

While in the beginning the foreign exchange measures were essentially aimed at overcoming difficulties resulting from the transfer crisis the necessity of supervising the exchange of goods became more and more apparent. Every foreign exchange control has this tendency of controlling all economic relations between states because as a peace time regulation it must remain ineffective and invites circumvention. Under the aspect of trade policy also this supervision of the exchange of goods was to remain neutral, i.e. it was not supposed to alter the customary import and export relations.

The failure of all provisional defense measures lead finally to the "New Plan" (September 1934) by which the former foreign exchange control measures were correlated and systematized. By this plan the principle of reciprocity was substituted by Germany for the price principle in force previously, an equalization of the trade balance in relation to all countries was aspired to. The control was advanced into the sphere of export and import. The guiding principles of this "New Plan" were:

1. Only to buy what can be paid,
2. Only to pay from one's customers,
3. Only to buy what is needed most.

These 35 control offices had to investigate whether in every single import transaction these new principles had been observed and to issue individual licenses if the prerequisites existed. The former subsequent proportionate allocation was thus replaced by licensing in advance, similarly to today's JELs import procedure. In view of the regional scattering of the German import and export described above the prerequisites for such a procedure were as unfavorable as can be imagined.

For this reason a difficult and expensive process of shifting of the German import started (conf. schedule 12 and chart IV). Particular problems were presented by the equalisation of the fractional amounts of the clearing, resulting again and again. It is to be noted as a curiosity that the Western and Northern customer countries, having before felt discriminated against by the German quota system now, on their part, obligated Germany in a number of new clearance agreements to reduce by foreign exchange licenses Germany's purchases in proportion with her export to these countries, a proportion to be established by agreement. Technically the clearing took place through accounts at the central banks of both countries. Both parties paid in their own currency to accounts in their respective countries. The central banks settled then from time to time the mutual assets and liabilities (full clearing).

With the "New Plan" the success was finally achieved which had been aspired to for a long time. From the first quarter of 1935 on the German imports decreased, the German exports increased from the second quarter of 1935 on. The year 1935 thus closed again with an urgently needed export surplus of RM 111 million. The overseas export increased again absolutely since summer 1934, the export to Europe did not reach its low point - a result of the shift - until 1935. Germany's share in the world export rose from 9.1 % (1934) slowly but steadily to 9.4 % (1937) (See schedule 7).

In spite of it the inventors of the "New Plan", the then Reichminister of economics Dr. SCHACHT and Reichsbankdirektor Dr. LESSING were in no way happy about this enforced perfectioning of the German foreign exchange control. In a lecture about the "international debt and credit problem" held in Bad Eilsen on 26 August 1934 Dr. SCHACHT called his own creation a "horrible plan" and emphasized that a complete disruption of world trade would be the inevitable result of a clearing of the trade balances of the individual countries carried out consistently.

And Dr. BLESSING stated (in a preface to a booklet of Werner F. FISCHER, *Devisenabwertung*): That an interest on our side in the system of clearing and bilateralism existing today was out of question and continued then: "The clearing was enforced on us as a means of pressure of the debt policy, and bilateralism is nothing else than a compulsory result of the clearing. We detect this entire system because of its destructive effect on economy. It obstructs our export by forcing us to equalize our trade balance with respect to every individual country on its limited market instead of the spacious world markets . . .".

This attitude was not a singular one in Germany at that time. Every intelligent German had kept a worried eye upon this development, as Germany was in danger of losing thus finally all her advantages derived from her hitherto longfold free trade. But a restitution of the old free credit and trade relations of world economy would not, at that time, have been either in Germany's nor in any other country's power. All prerequisites were lacking at that time.

Particularly German export industry could not go its own way in view of the foreign exchange and foreign trade policy established by the state, but had to adapt itself practically within the frame of the general policy. An other way would not have been possible even under a democratic regime much less under a totalitarian regime reigning with special powers and reprisals.

As shown by the example of all countries in this period private economy can never and nowhere change on its own initiative the basis of the foreign exchange and economic policy of the state.

Today Great Britain is faced with a similar predicament as Germany was at that time. Also Great Britain had to proceed to a strengthening of the bilateral trade policy, completely against the wishes of CRIPPS, the responsible minister (confer White paper regarding the British trade balance of February 1940), in order to master her acute difficulties with regard to her trade balance.

2. Measures for the stimulation of export.

For a long time German promotion of export was only a by-product of the other measures described already. In the beginning one was satisfied with making the effort of foreign creditors to liquidate their blocked accounts in Germany subservient to the stimulation of export. This was done by utilizing for the purpose of additional exports Sperrmark (since 1933), Scapa (since July 1933) and Foreign bonds traded with a discount. These foreign assets created by the stand still agreements, the part and the full transfer moratorium were practically frozen in Germany. Abroad they were traded with a discount. By permitting the use of these blocked bank credits for the payment of so-called "additional exports", the creditors were given an opportunity of exchanging at least a part of their assets for foreign currency and thus of saving them. At the same time German export was by this partial devaluation given a certain competitive adjustment with respect to countries with devaluated currencies.

When the devaluation wave abroad spread more and more on, was forced to unify the entire system of export stimulation in order to increase its effectiveness and to centralize it at the conversions bases for German payments going abroad. The share of the additional export rose

from	3 %	1933
to	15-20 %	1933
	40 %	1934
	70 %	First part of 1935.

The procedure showed the tendency of developing in to a measure of a stimulation of debt cancellation instead of export stimulation bringing in foreign currency which was unsupportable in view of the urgent demand for imports.

Therefore a basic change of the system of export premiums was undertaken, starting on 1 July 1933. Whereas the costs of the export subsidies had been hitherto borne abroad they were now put upon the shoulders of the German inland economy. Within the sphere of a "self help action of commerce and industry" every economic group had to set up a fund for export stimulation by way of an assessment of exports out of which export premiums were paid to the exporting enterprises.

Instead of the lowering of the entire price level by deflation there was a lowering of the partial price level of the export prices by the individual payment of premiums for export (partial devaluation). In contrast to devaluation of the currency the export price was lowered by this procedure without at the same time, increasing the cost of the import. The JELA applies a similar method today by using a differentiated rate of exchange regarding German exports according to the quality of the merchandise and the receptiveness abroad.

with regard to this merchandise. Since the method of a radical devaluation of the Reichsmark in relation ^{to} the Pound and Dollar could not be used on account of technical considerations of the leading circles as well as on account of the unsurmountable prejudice of the population (inflation complex) nothing else was left than this indirect, partial devaluation differentiated according to countries. A uniform price level in world economy did by no means exist any more at this time (conf. schedule 4).

The disadvantage of the method was that every change of the subsidy rates had to inject factors of uncertainty into business life and to render calculations more difficult. Besides, a large amount of personnel was required as a result, in order to observe market conditions in foreign countries. It differed from the general devaluation in creating, in addition, not transparent competitive conditions, but was not accompanied by dumping, as Germany's urgent interest in getting as much money as possible out of her exports was opposed to it.

In a certain sense ^{preliminary} some forms of mutual clearing may also be counted among means of export promotion. They were:

1. Barter transactions, merchandise against merchandise between two partners
2. compensation transactions, viz. quadrangular transactions. In this transaction the German importer paid inland currency to the German exporter, the foreign partners did likewise.
3. reciprocity transactions in the narrower sense of the word, permitted for a while as additional transaction.

These primitive bilateral or quadrangular transactions had their origin in the necessity of overcoming by the private initiative of individual economic circles the lack of foreign currency in Germany ^{and} the import restrictions resulting therefrom.

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The import was made possible without laying claim to an official allocation of foreign exchange by arranging a correspondent direct delivery of German goods as an equivalent. The result was, however, that the Reichsbank did not obtain any foreign currency for this German export merchandise and that, in this way, undesirable as well as superfluous goods were imported and that, in addition, German export merchandise was given away at insufficient prices, in order to make such private barter transactions possible at all. In the course of the increased expansion of the international clearing to the entire merchandise field these primitive forms of direct exchange were gradually abrogated. The foreigners' accounts for payments in Germany (ASKI) represented a refined form of the method of compensation. The foreign suppliers had the equivalent of their merchandise deliveries to Germany paid in Reichsmark into accounts, in order to pay their purchases of merchandise from Germany with their balances in these accounts. They proved their worth only where the ASKI system covered all methods of payments as in the trade with South and Middle America, because there they did not constitute any competition for regular transactions bringing in foreign currency.

F. The transition to autonomous economic policies (Measures creating employment)

Germany took a long time in joining the practice of the other great powers in world trade and in proceeding from deflationary policies to an autonomous economic policy. The USA started their New Deal almost at the same time as Germany. As already set forth

the orthodox deflationary policy of the years until 1932 was unsuccessful for the German foreign economy, as the other powers were not prepared any more to apply on their part the rules of the balancing mechanism at the expense of their inland economy. The catastrophic effects of the world credit crisis and the world economic crisis upon Germany's inland economy have also been discussed briefly, as well as the dangerous effects upon internal policy, such as mass unemployment, lowered profits and a steadily deteriorating standard of living. The desire to switch German economic policy to a policy creating employment originated in these parts. The rule is generally applicable, I dare say, that desperate masses dropped from the relief rolls will, at all times and places, follow the slogans of politicians promising them bread and work, particularly, if the economic method applied so far were unsuccessful. This happened also in Germany in the beginning of 1933, when the National Socialists were carried to power by the prevailing conditions.

Starting conditions were extremely favorable thereby. In the course of 1932 the depressive forces had gradually run their course in Germany as well as in the world economy. Everywhere the first signs of a new upward development of economy could already be found. The German production apparatus having been modernized in the period of rationalization had largely come to a stand-still, it is true, but could, its capacity intact, be comparatively quickly started again by the utilization of newly created credits, particularly since a well trained labor pool willing to work, was available, consisting of millions of unemployed. In the beginning there were also sufficient raw materials, semi finished goods and consumer goods.

Economic activity was further stimulated by public works program (e. g. the building of Reichsautobahnen), by lowering taxes forced up in the crisis, by tax relief measures for building repairs and the purchase of short term capital goods and similar measures. Success soon became evident. The index of industrial production rose from 58.7 (1932) from year to year and, in 1936, with 106.7, surpassed already the highest stand of the boom (1929). Unemployment decreased correspondingly from 5 575 493 (1932) to 3 161 039 (1935) (conf. schedule 9).

G. Causes and significance of endeavours for autarky

In the course of the policy of creating employment there were only tensions when in 1934, after the using up of the reserves of raw materials, the import requirements increased strongly, while the export was faced with ever mounting obstacles. It was shown above by which means Germany tried to protect herself, but Germany could not free herself any more from the plight of the pressing import requirements.

Attempts had to be undertaken soon, therefore, to lower import requirements in some other way. The tendencies comprised under the slogans: "Autarky", "Agricultural battle for production" and "Four Year Plan" served the purpose of lowering the share of the import requirements with regard to providing raw materials and food stuff for inland economy by increasing production in Germany. Involved was mainly an increase of agricultural production in fields, where the import requirements were especially high, such as e.g. with regard to the production of fats (fat shortage). In the industrial sector the production of synthetic rubber (buna), synthetic gasoline,

and oil (by the hydrogenation of coal), of plastics and staple fibre was aspired to and also achieved, in addition the smelting of German ore with a low contents of iron a.o.. It would have been more economical, of course, to continue buying these raw materials as natural products in the customary quality and at more favorable conditions from the old suppliers. Such a procedure was barred however, by the shortage of foreign currency which had to remain in reserve for necessary imports and irreplaceable imports, e.g. of iron ore, non ferrous metal, food stuff a.s.o. Unfortunately the autarchist tendencies of the then leadership of the state were strengthened by the boycott and the refusal of offers to foreign countries, e.g. to exchange for several years great quantities of cotton from the USA, at guaranteed prices, for German goods.

Although such a state of autarchy must in normal times be regarded as uneconomical it can, however, be readily understood as the smaller evil, if the will is lacking to exchange goods on a world wide basis or if possibilities of such exchange are lacking. Also other countries acted for various reasons in a similar way later on. The USA e.g. built up a large production of synthetic rubber, in order to become independent from the importation of this war essential product in times of war. It was made known in the press that the USA, also after world war II, refused to yield to the wishes of the producers of natural rubber to stop their own production of synthetic rubber in view of the fact that the production of natural rubber was sufficient again for the needs of the world. In addition to strategic considerations sufficient economic reasons may also adduced for this attitude of the USA: the independence from a fluctuating harvest, quality

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and prices at the raw material markets of the world, the saving of foreign currency, the rounding out of the own production assortment, the increased employment opportunities for the American people, considerations for the high capital investments, the lower cost of production of synthetic rubber in case of full utilization of the capacity existing in the USA.

The ideal of a free exchange of goods within a world economy dividing labor according to the standards of the law of the comparative costs can only be realized as long as a world economy is available, capable of functioning for all countries.

R. Summary

As a result of the examination of the causes of the German foreign and internal economic policy in the years before and after 1933 it is to be stated, that Germany played, certainly until the end of 1933, only a passive role in the slow undermining and final dissolution of the old world economic balancing mechanism. It is a matter of course that every German protective measure caused in itself reciprocal effects again and thus affected other countries adversely. There is no denying that the governing party after 1933 often wanted to make a virtue of necessity, reacting more emotionally than in scientific recognition of world economic connections. Thus they raised to the level of a program an economic policy forced upon Germany by conditions alone. For many years after the seizure of power they had to fight thereby against the resistance of

orthodox Reichsbank circles, the high ministerial bureaucracy and wide scientific economic circles, the banks and economy, as can be gathered from the pertinent aggressive speeches against these circles made by the leading National Socialist politicians.

Moreover, the last word has not been spoken yet with regard to the question whether a return will be possible again to the good old time of world economy steered by the balancing mechanism or whether the future will be determined by the new economic methods applied ^{the} and further developed in all countries since/crisis of world economy. The putative natural order of the old world economy with its automatic balancing mechanism seems really to have been nothing else but a highly developed artificial organitary form, gone for the time being with one of its most essential prerequisites, the undivisible peaceful world of Pax Britannica. It must be left to the future whether, in view of the present partition of the world in an Eastern and a Western block, the reconstitution of a one and indivisible world will be possible again. One has only to remember that England, the liberal free trade nation par excellence, adapted, under the labor party government, the directly opposite methods of a Socialist and state controlled planned economy. Also some opinions of foreign circles, completely beyond suspicion, on economic methods of the third Reich, introduced as improvisations give reason for speculation in this respect. Thus if one reads in a thorough dissertation on: "The Evolution of Autarchy" in the World Economic Survey, Fifth Year, 1935/36 of the League of Nations n. 199: "The second method that has been employed in the German 'new plan' of

export stimulation is not peculiar to Germany, but has been developed there on larger scale and with an intensity and effectiveness greater than hitherto known¹. Or if at the occasion of a meeting of American, British and German economists, sociologists and administrative officials held in March 1948 in Seeshaupt on the lake Starnberg, a British economist, following a German statement that it was of paramount importance for German political science to reestablish contact again with foreign research replied that, on the other side there was also a need for countries abroad to reestablish contact again with Germany. He based his opinion on the thesis that, in his opinion, it would be a mistake for German economists to throw all experiences collected during the National Socialist experience out of the window now, blindly so to speak, under the impression of the Hitlerite bankruptcy. The German improvisations carried out in grand style, paying no attention whatsoever to theory, would have subsequently to be examined scientifically with positive and negative results and could become a valuable German contribution to overcoming the state of need, not limited to Germany by any means and to reconstruction of the European economic territory.

The question finally whether individual persons in the economy or groups of persons would, under a totalitarian dictatorship, have had a chance to prevent, in accordance with their convictions, contrary to the will of the almighty party, the exaggerations of National Socialist economic policy and its abuse

1) Quotation in Sueddeutsche Zeitung.
No. 23, v. 3 (30 March 1948) "Fertile conversations".

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for purposes not approved need not be answered any more by the writer after the newest experiences with totalitarian methods, e.g. in the German Eastern Zone and in Czechoslovakia.

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Chart 1 -

Germany's Foreign Debts
(in Billion RM)

Time	Total	Long Term	Short Term of these frozen	annual interest transfer, %
Middle of 1930	26,8	16,3	16,0	-
Dec. 1930	25,8	10,7	15,0	-
July 1931	23,8	10,7	13,1	6,3)
Nov. 1931	21,3	10,7	10,6	5,4)
Febr. 1932	20,6	10,5	10,1	5,0)
Sept. 1932	19,5	10,3	7,3	4,3)
Febr. 1933	18,0	10,3	7,7	4,1)
Sept. 1933	16,6	7,4	7,4	3,0)
Febr. 1934	13,9	7,2	6,7	2,6)
Febr. 1935	13,1	6,4	6,7	2,1)
Febr. 1936	13,4	6,1	6,3	1,7)
Febr. 1937	10,8	5,4	6,4	1,3)
Febr. 1938	9,9	5,0	4,9	0,7)
Febr. 1939	9,5 1)2)	4,6	4,9	0,7)

Source: Rudolf Hicke, "The Foreign Trade" 15th Vol. 1939

- 1) This sum includes all capital and trade debts of the German economy to foreign countries, as well as blocked credits. Not included are the investments of foreigners in Germany in the form of buildings and real estate, partnerships with approx. 3 billion Marks.
- 2) Without Austria's foreign debts, which amount to a total of approx. 1 billion RM.

Chart 2

Capital Balances in Billion Reichsmark

UNITED STATES

at year-end	1913	1922	1926	1929	1930	1931
Balance of long term credits and/or debts	-17,0	+30,7	+41,2	+42,4	+43,6	+42,0
Balance of short term credits and/or debts	-	- 5,7	- 5,1	- 4,6	-3,0	0
Cash Balance of Gold and foreign currency	0,0	10,5	17,2	12,1	10,3	10,0
Balance	-8,0	+35,5	+53,3	+49,9	+50,9	+52,0

FRANCE *)

at year-end	1913	1922	1926	1929	1930	1931
Balance of long term credits and/or debts	+30,0	+5,6	+5,6	+5,0	+6,0	+6,0
Balance of short term credits and/or debts	-	+3,0	+2,0	+2,5	+2,0	+1,0
Cash Balance of Gold and foreign currency	5,0	9,7	12,2	12,7	14,0	15,7
Balance	+35,0	+28,3	+29,8	+29,2	+32,0	+32,7

*) estimates, partly uncertain

GERMANY

at year-end	1913	1922	1926	1929	1930	1931
Balance of long term credits and/or debts	+20,0	+1,7	-7,3	-0,1	-1,1	-0,7
Balance of short term credits and/or debts	- 1,0	-6,7	-0,6	-1,2	- 0,0	-7,1
Cash Balance of Gold and foreign currency	+4,8	+2,2	+2,0	+2,7	+2,7	+7,0
Balance	+23,8	+9,2	-15,9	-15,6	-15,4	-10,8

GRAT BRITAIN

at year-end	1913	1922	1926	1929	1930	1931
Balance of long term credits and/or debts	+ 75,0	+71,0	+73,0	+76,0	+76,0	+ 61,0**
Balance of short term credits and/or debts	-	-5,7	-5,2	-5,6	- 5,6	- 1,0
Cash Balance of Gold and foreign currency	2,3	3,1	3,1	3,0	3,0	2,5
Balance	+77,3	+68,4	+70,9	+73,4	+73,4	+62,5

***) Sterling Devaluation

Chart 3

The International Money Crisis

1st phase

Collapse of the overvalued raw products countries

Country	Cover of note circulation in Million Marks					Exchange rate, in % of parity 1)				
	End		Middle			End		Middle		
	1929	1930	1931	1931	1932	1929	1930	1931	1931	1932
Australia	459	376	315	218	218	99,4	98,4	92,0	56,3	57,5
Argentina	2,547	1,823	1,729	1,061	1,061	99,0	96,5	74,7	60,0	51,3
Brazil	623	631	65	-	-	99,5	92,0	76,3	61,2	62,7
Bolivia	39	13	4	31	25	99,3	97,9	87,3	71,1	71,5
Chile	274	241	184	94	86	98,4	99,7	99,2	87,8	49,9
Colombia	264	185	112	56	65	99,7	99,1	99,0	99,6	97,9
Costa Rica	32	30	24	12	14	100,0	98,2	98,2	93,3	85,5
Cuba	36	30	18	-	-	93,6	83,3	77,6	63,7	54,0
Ecuador	116	104	83	71	45	92,2	77,8	72,7	68,5	71,5
Peru	286	286	263	222	210	90,6	80,6	60,1	42,6	40,1

2nd phase

Collapse of the East-European agricultural countries

Country	Cover of note circulation in Million Marks					Exchange rate, in % of parity 1)				
	End		Middle			End		Middle		
	1929	1930	1931	1931	1932	1929	1930	1931	1931	1932
Austria	473	439	540	189	113	99,7	100,0	84,8	74,6	60,0
Czechoslovakia	187	147	143	80	78	99,7	99,8	100,0	88,5	-
France	230	169	166	108	69	99,7	99,8	99,8	95,4	49,6
Yugoslavia	76	76	90	156	148	91,2*	91,2*	91,2*	100,1	97,9
Rumania	206	400	242	250	230	31,1*	50,6	50,3	100,4	100,4
Poland	542	525	400	322	249	99,9	100,4	100,1	100,6	100,0

per cent of old parity

3rd phase

Collapse of the Sterling and the northern currencies, and currency crisis in Germany and U.S.A.

Country	Cover of note circulation in Million Marks					Exchange rate, in % of parity 1)				
	End		Middle			End		Middle		
	1929	1930	1931	1931	1932	1929	1930	1931	1931	1932
Great Britain	3140	2,981	3,014	2,468	2,783	100,0	99,8	99,9	89,7	71,5
Canada	11461	935	961	755	609	99,2	99,3	99,3	81,7	87,2
Brit. Ind.	1,475	1,651	1,332	1,173	1,175	100,2	99,8	99,8	70,5	72,5
Sweden	506	576	713	286	381	100,0	100,0	100,2	70,4	66,0
Norway	210	230	209	190	176	96,6	99,6	99,9	69,1	66,6
Denmark	330	294	304	191	153	99,8	99,6	99,9	70,0	67,6
Germany	2,904	2,687	2,685	608*	525*	100,0	100,0	99,7	99,3	99,6**
U.S.A.	15,725	15,372	17,736	17,405	14,595	100,1	99,5	99,9	100,0	99,9

* without re-discount credit ** end of September

1) Compared with Berlin; U.S.A. and Germany compared with Paris

Chart 4

Figures on the Depreciation of the Currencies
(Discount in % of the old parity)

Monthly Average	1931 Dec.	1932 Dec.	1933 Dec.	1934 Dec.	1935 Dec. 1)
I. Sterlingblock:					
Egypt	30,7	32,3	32,6	39,0	40,1
Australia	43,7	46,2	46,7	52,3	53,4
Brit. Ind.	20,3	31,6	32,0	40,0	40,0
Denmark	30,6	36,4	46,5	51,2	51,4
Finland	40,2	43,7	42,6	47,6	49,0
Greece		56,0	56,0	56,7	56,0
Great Britain	30,6	32,4	32,0	37,7	40,0
Canada	16,9	13,2	35,7	30,2	31,3
Norway	31,2	36,0	37,7	45,0	45,3
Portugal	30,4	31,2	32,6	30,6	40,1
Spain	56,3	57,6	57,6	58,0	57,0
South Africa Union			33,3	40,3	40,3
Sweden	34,1	33,0	37,1	43,6	43,0
II. Countries with final devaluation:					
Belgium	.	.	.	.	28,2
Russia	.	.	.	.	77,3
Czechoslovakia	.	.	.	16,4	17,2
United States	.	.	36,1	40,7	40,7
III. Other countries					
Argentina	41,2	51,7	50,3	64,7	61,0
Brazil	50,0	45,0	54,6	60,2	73,3
Danish	.	.	.	2,6	42,7
Italy	.	.	.	3,6	9,5
Japan	11,2	50,1	60,5	65,7	65,8
Yugoslavia	.	24,1	26,3	23,3	23,5
Mexico	.	.	.	66,0	.
Austria	0,2	12,0	19,6	17,0	17,0

1) Key Date 20 December 1935

Source: Germany's Economic Situation, 1935/36, published by the Reichskredit-Gesellschaft, Berlin

Chart 5Germany's Import and Export 1)

(Special Trade) (in Mill. Marks)

Year	Import	Export	Balance
1912	10 592	8 959	- 1 735
1913	10 770	10 097	- 673
1915	12 362	9 290	- 3 072
1925	10 002	10 415	+ 413
1927	14 528	10 801	- 3 727
1928	14 001	12 276	- 1 725
1929	13 447	13 483	- 36
1930	10 393	12 036	+ 1 643
1931	6 727	9 599	+ 2 872
1932	4 667	6 739	+ 2 072
1933	4 204	4 671	+ 467
1934	4 451	4 167	- 284
1935	4 150	4 270	- 120
1936	4 216	4 768	+ 552
1937	5 469	5 911	+ 442

From 1937 on including silver.

1) From Stat. Year Book for the German Reich

Holdings
Germany's of Gold and Foreign Currency 1)

(In Million Marks)

Yearly Averages	Gold	Foreign Currency for cover	Total
1925	1 123,3	351,8	1 474,0
1926	1 574,5	426,8	2 001,3
1927	1 604,0	226,4	2 130,4
1928	2 255,3	243,7	2 499,0
1929	2 323,7	277,1	2 600,8
1930	3 513,1	307,6	3 820,7
1931	1 711,1	303,3	1 914,4
1932	838,7	135,9	974,6
1933	457,1	72,6	529,7
1934	150,7	6,1	156,8
1935	86,1	4,9	91,0
1936	69,8	5,4	75,2
1937	68,0	5,8	73,8

1) From: Stat. Year Book for the German Reich

Gumrey's share of world trade 1)

(in per cent)

	1913	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937
Import	12.9	7.6	7.5	10.1	9.7	9.1	7.7	7.9	9.1	8.1	8.5	8.2	7.9	6.1
Export	13.1	7.1	6.4	8.3	8.1	8.7	11.1	10.1	11.0	11.2	9.1	9.2	9.3	8.4
Turnover	13.0	8.1	7.9	9.2	8.9	8.9	9.4	10.5	10.5	9.1	8.8	8.7	8.6	7.7

1) From 1913. Year Book for 1938, Chapter 1, Table 1.

Import and Export per Head of Population 1)

(In %)

	1914		1919		1924		1927		1928		1929		1930	
	I	E	I	E	I	E	I	E	I	E	I	E	I	E
Germany	160	150	158	149	170	166	227	171	220	193	210	211	162	187
France	172	160	220	230	169	196	217	222	215	207	228	196	204	166
Great Britain and Northern Ireland	293 ²⁾	233 ²⁾	325	308	506	295	475	319	481	323	495	325	425	253
U.S.A.	7	105	151	175	155	169	145	169	162	176	117	175	102	109

	1931		1932		1933		1934		1935		1936		1937	
	I	E	I	E	I	E	I	E	I	E	I	E	I	E
Germany	104	149	72	88	64	75	68	64	62	64	63	71	81	87
France	163	118	116	76	110	71	89	69	82	60	92	56	102	58
Great Britain and Northern Ireland	330	161	207	116	188	110	164	107	182	111	206	116	248	136
U.S.A.	69	81	43	52	38	44	32	41	39	43	45	46	57	62

1) From Statistical Year Book for the German Reich 2) Great Britain, Northern Ireland and Irish

Figures on the Economic Development of Germany

Year	Index of Germany's Industrial Production (1928 = 100) ¹⁾	Development of Unemployment in Germany ²⁾	National Income in Purchasing Power ²⁾ (Mill. DM)
1926	78,7	.	62 673
1927	101,2	.	70 754
1928	100,0	1 391 000	75 373
1929	100,9	1 898 604	75 949
1930	88,9	3 075 880	70 823
1931	72,8	4 519 704	57 458
1932	59,7	5 575 422	45 175
1933	65,5	4 904 428	45 514
1934	83,3	2 718 309	52 710
1935	95,9	2 151 039	58 532
1936	106,7	1 592 655	64 940
1937	116,8	912 312	70 972

1) From the Institute for the Analysis of Business Conditions

2) From the Statistical Year Book for the German Reich

Export Opinion Works

Start 10

Maximum Foreign Exchange Amounts and Imports ¹⁾

in Germany 1932 - 1934

Period	Maximum Foreign Exchange Amounts	Total	Imports
			Raw and semi Finished Products
Monthly Average: Oct.1930 to Sept.1931 = 100			
1932			
February	100	70	70
March	75	58	57
April	55	50	57
May	50	55	54
May 1932 to Febr.1934	50	55	52
1934			
March	45	60	75
April	35	64	77
May	25	61	73
June	10 / 2	60	63

1) Reduction of the quota for acceptance credits, April 1934 to 70%, June to 20%, August to 10%.

Source: Quarterly magazines of the Institute for the Analysis of Business Conditions, 9th Year No.3 T.A.S.07

1)
Germany: Balance of Payments (Millions of Marks).

	1928/29	1925			1926			1927			1928			1929		
	Balance	Export	Import	Balance	Export	Import	Balance	Export	Import	Balance	Export	Import	Balance	Export	Import	Balance
Merchandise.....	- 1 470	9 546	11 990	- 2 444	10 577	9 884	+ 793	11 118	14 078	- 2 960	12 627	13 938	- 1 311	13 632	13 676	- 44
Services.....	+ 550	883	594	+ 289	1 077	674	+ 403	1 337	897	+ 440	1 460	963	+ 497	2 069	1 545	+ 524
Reparations-Services....	-	25 173	-	+ 173	93	10	+ 83	205	-	+ 205	175	-	+ 175	188	-	+ 188
Interest.....	+ 970	320	326	- 6	340	513	- 173	335	680	- 345	382	945	- 563	400	1 200	- 800
Reparations.....	-	-	1 057	- 1 057	-	1 191	- 1 191	-	1 584	- 1 584	-	1 990	- 1 990	-	2 337	- 2 337
Balance.....	+ 50			- 3 045			- 85			- 4 244			- 3 192			- 2 469
Movements of Gold and Foreign Exchange of Banks of Issue.....	200	475	515	- 90	56	324	- 568	574	122	+ 452	-	931	- 931	510	345	- 165
Movement of Capital.....	+ 150	3 222	87	+ 3 135	1 541	988	+ 553	4 046	254	+ 3 792	6 975	2 552	+ 4 423	4 423	2 119	+ 2 304
Total.....		14 620	14 620	-	13 884	13 884	-	18 215	18 215	-	21 619	21 619	-	21 222	21 222	-

	1930			1931			1932			1933			1934			1935		
	Export	Import	Balance	Export	Import	Balance	Export	Import	Balance	Export	Import	Balance	Export	Import	Balance	Export	Import	Balance
Merchandise.....	12 175	10 617	+ 1 558	9 773	6 955	+ 2 778	5 834	4 782	+ 1 052	4 957	4 291	+ 666	4 240	4 613	- 373	4 335	4 343	- 8
Services.....	1 841	1 303	+ 538	1 515	1 065	+ 450	1 163	898	+ 265	735	422	+ 313	885	422	+ 464	937	486	+ 451
Interest.....	400	1 400	- 1 000	300	1 500	- 1 200	200	1 100	- 900	150	997	- 847	125	750	- 625	100	550	- 450
Reparations.....	-	1 706	- 1 706	-	988	- 988	-	160	- 160	-	-	-	-	-	-	-	-	-
Balance.....			- 510			+ 1 040			+ 257			+ 132			- 534			- 107
Movements of Gold and Foreign Exchange of Banks of Issue.....	192	72	+ 120	+ 1 553	-	+ 1 553	256	-	+ 256	447	-	+ 447	424	-	+ 424	34	4	+ 30
Movement of Capital.....	3 678	3 188	+ 490	3 817	6 510	- 2 693	786	1 299	- 513	831	1 410	- 579	1 310	1 200	+ 110	837	760	+ 77
Total.....	18 286	18 286	-	- 17 019	17 019	-	8 239	8 239	-	7 120	7 120	-	6 985	6 985	-	6 243	6 243	-

After 1935 "Interest" includes the payments against political debts.

1) According to: Stat. Jahrb. f. d. Deutsche Reich.

The German Balance of Payments 1924 - 1935

) Balances of the individual sections in Mill. Marks)

Year	I New Debts during the year	II Interest and Dividends	III Repatriations	IV Financ. Business Loans Flight of Capital	I-IV Total section Capital	V Movement of Gold and Foreign Reserves	VI Services, Balance	VII Trade Balance
1924	+ 1 506	+ 159	- 261	+ 1 402	+ 2 776	- 1 255	+ 235	- 1 816
1925	+ 1 231	- 6	- 1 057	+ 1 856	+ 2 654	- 90	+ 43	- 2 444
1926	+ 1 523	- 173	- 1 191	- 939	- 786	- 568	+ 555	+ 793
1927	+ 3 944	- 345	- 1 584	+ 249	+ 1 863	+ 452	+ 645	- 2 960
1928	+ 3 033	- 563	- 1 990	+ 1 040	+ 1 570	- 931	+ 672	- 1 311
1929	+ 1 179	- 800	- 2 337	+ 1 125	- 833	+ 165	+ 712	- 44
1930	+ 1 236	- 1 000	- 1 706	- 746	- 2 216	+ 120	+ 530	+ 1 558
1931	+ 657	- 1 200	- 988	- 3 403	- 4 934	+ 1 746	+ 150	+ 2 818
1932	- 749	- 900	- 160	+ 259	- 1 350	+ 233	+ 265	+ 1 52
1933	- 732	- 700	- 147	+ 173	- 1 426	+ 477	+ 313	+ 666
1934	- 190	- 625	-	- 80	- 515	+ 424	+ 460	- 373
1935	+ 127	- 550	-	- 55	- 478	+ 3	+ 651	- 3

Source: Statistical Year Book for the German Reich

Die Lagerung des deutschen Aussehens.

Rebelle 12

Ländergruppen und -länder Groups of Countries and Countries	Change of German Foreign Trade				1938			
	1929	1932	1935	1938	1929	1932	1935	1938
	Anteil an der Gesamtexport in % Share in the Overall Export in %				Anteil an der Gesamteinfuhr in % Share in the Overall Import in %			
Ägypten, Türkei u. Vorderasien 1)	2) 1,4	2) 1,3	2) 3,4	5,4	2) 1,4	2) 2,5	2) 3,8	3,8
darunter: including								
Türkei	0,5	0,6	1,6	2,9	0,8	0,9	2,2	2,1
Ägypten	0,6	0,6	0,9	0,9	0,6	0,9	1,1	0,8
Südosteuropa 3)	4,3	3,5	5,5	10,3	3,8	5,0	7,7	9,8
darunter:								
Rumänien	1,2	1,1	1,5	2,8	1,6	1,6	1,8	2,6
Jugoslawien	1,1	0,8	0,9	2,2	0,4	0,6	1,5	2,0
Ungarn	1,1	0,8	1,5	2,1	0,7	0,8	1,9	2,0
Griechenland	0,6	0,4	1,1	2,1	0,8	1,3	1,4	1,7
Bulgarien	0,3	0,4	0,9	1,1	0,4	0,7	1,0	1,5
Süd- und Mittelamerika 4)	7,3	4,1	9,1	11,7	11,4	9,6	13,1	14,9
darunter:								
Brasilien	1,6	0,9	2,8	3,1	1,6	1,7	4,3	3,9
Mexiko	0,4	0,4	0,8	0,9	0,7	0,5	0,9	1,1
Chile	0,7	0,2	0,8	1,2	0,9	0,5	1,3	1,7
Argentinien	2,8	1,6	2,3	2,8	5,5	4,1	3,4	4,0
Kolonialafrika 5)	1,0	0,7	1,0	1,6	3,3	3,5	3,6	4,0
Empireländer 6)	3,9	3,9	5,1	5,8	10,6	8,3	6,0	7,9
darunter:								
Britisch-Indien	1,6	1,8	2,6	3,1	4,6	3,4	2,8	3,0
Britisch-Südafrika	0,7	0,7	1,0	1,6	1,2	1,1	1,6	2,2
Australischer Bund	0,6	0,4	0,8	0,8	2,3	2,0	0,9	1,8
Canada	0,6	0,6	0,7	0,5	2,5	1,4	0,3	1,5
Italien einschl. Italienisch-								
Ostafrika und Libyen	4,5	3,9	6,5	6,8	3,3	3,9	4,5	4,5
Nordwesteuropa	10,2	9,4	11,4	12,9	7,3	6,4	9,9	11,4
darunter:								
Schweden	3,5	4,0	4,8	5,1	2,6	2,0	3,7	4,8
Dänemark einschl. Island	3,6	2,9	3,3	3,9	2,8	2,6	2,9	3,2
Norwegen	1,7	1,7	2,0	1,3	1,0	1,1	2,3	1,8
Finnland	1,4	0,8	1,2	1,6	0,9	0,6	1,0	1,6
Südwesteuropa 7)	2,1	2,1	3,2	2,5	2,2	2,4	3,3	2,5
darunter:								
Spanien einschl. Span. Afrika	1,6	1,6	2,5	1,8	1,9	2,1	2,8	2,3
Ostasien 8)	5,1	3,8	5,4	6,1	6,4	7,4	6,8	7,4
darunter:								
China 9)	1,4	1,4	2,2	2,4	2,0	3,8	2,5	3,3
Japan	1,8	1,4	2,0	1,6	0,3	0,4	0,5	0,5
Niederländisch-Indien	1,4	0,8	0,8	1,0	2,7	2,6	2,9	2,4
Britisch-Malaya	0,2	0,1	0,2	0,3	0,3	0,3	0,6	0,8
Osteuropa 10)	4,8	2,6	2,6	4,2	4,1	3,1	2,9	3,8
darunter:								
Polen	2,5	1,2	1,1	2,0	2,5	1,3	1,4	1,8
Nordosteuropa	26,2	31,9	26,1	20,8	15,7	15,1	14,1	11,7
darunter:								
Belgien-Luxemburg	4,5	5,3	4,7	4,3	3,3	3,1	3,0	3,6
Niederlande	10,1	11,0	9,5	8,5	5,2	5,9	4,7	3,6
Frankreich	6,3	8,4	5,9	4,1	4,8	4,1	3,7	2,6
Schweiz	4,7	7,2	6,0	3,6	2,4	2,0	2,7	1,9
Großbritannien	9,7	7,8	8,8	6,7	6,4	5,5	6,2	5,2
Tschecho-Slowakei	4,9	4,4	3,0	2,6	3,6	3,0	2,9	2,4
Österreich	3,0	2,6	2,5	-	1,5	1,4	1,7	-
Vereinigte Staaten von Amerika	7,4	4,9	4,0	2,8	13,3	12,7	5,8	7,4
UdSSR	2,7	10,9	0,9	0,6	3,2	5,8	5,2	0,9
Insgesamt	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0

- Incl. Palästina
1) Einschl. Iran, Irak, Afghanistan, Syrien-Libanon
without 2) Ohne Irak, Afghanistan, Syrien-Libanon
incl. 3) Einschl. Albanien
incl. 4) Enthält neben den aufgeführten Ländern: Ecuador, Paraguay, Bolivien, Panama, Cuba, Uruguay, Nicaragua, Haiti, Costa Rica, Honduras, Dominikanische Republik, Venezuela, El Salvador, Guatemala, Peru.
5) Afrika ohne Ägypten und Britisch-Südafrika
incl. 6) Einschl. Island und Irland
7) Spanien und Portugal
incl. 8) Enthält neben den aufgeführten Ländern: Indochina, Siam, Ceylon
incl. 9) Einschl. Mandschukuo und Hongkong
incl. 10) Einschl. Estland, Lettland, Litauen, Dänig.

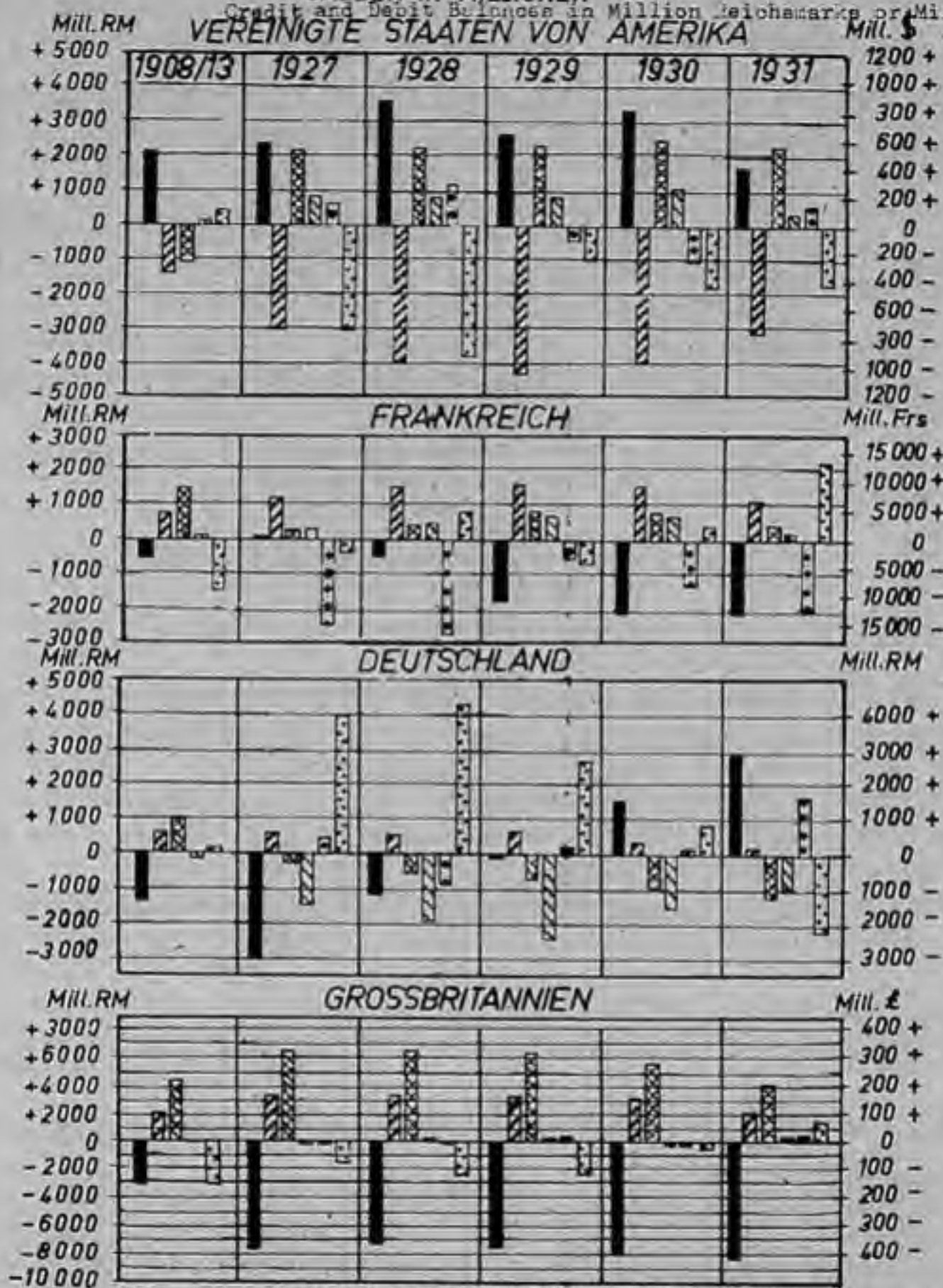
Quelle: Vierteljahrshefte zur Wirtschaftsforschung des Instituts für Konjunkturforschung, 14. Jahrg 1939/40, Heft 1, S. 75, 77.

Source

ZAHLUNGSBILANZEN

Saldo of Payment

SALDEN IN MILLIONEN
Credit and Debit Balances in Million Reichsmarks or Million \$ resp



Credit Balances +AKTIVSALDEN • NETTOZAHLUNGSEINGÄNGE Net Surplus of pay-
Debit Balances -PASSIVSALDEN • AUSGÄNGE Net Deficiency of payments
Außen- Dienst- Zinsen Politische Gold u. Kapitalbe-
handel- leistung Zinsen Übertragungen Devisen- wegung
Foreign Services Interest Political Movement of Gold Capital
Trade Transfers and Foreign Exchange

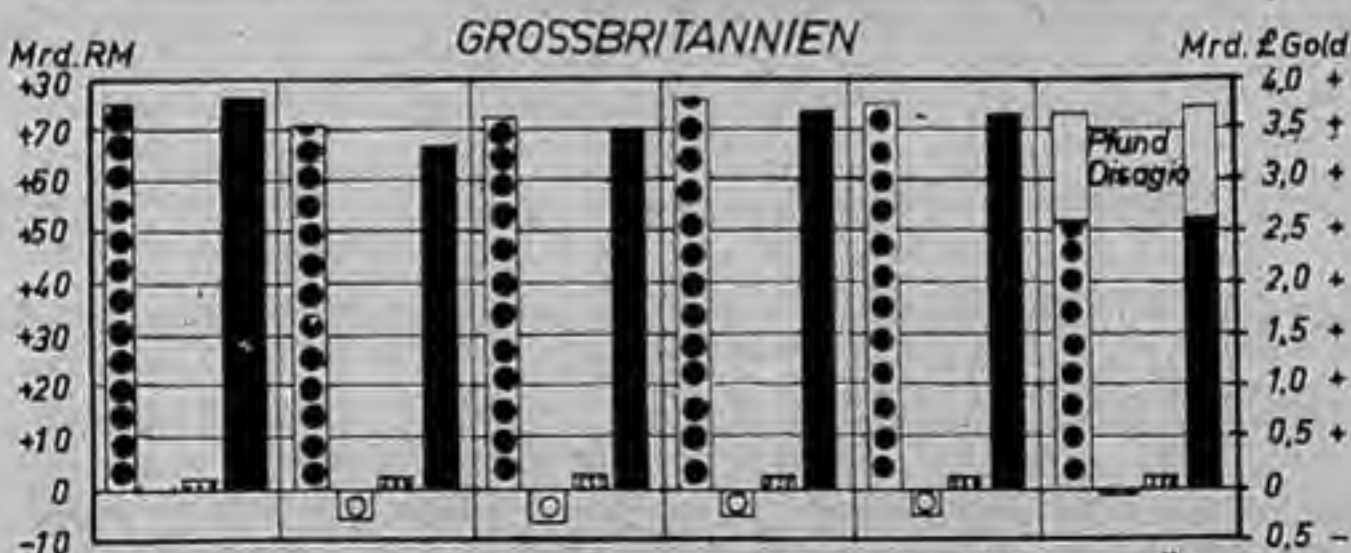
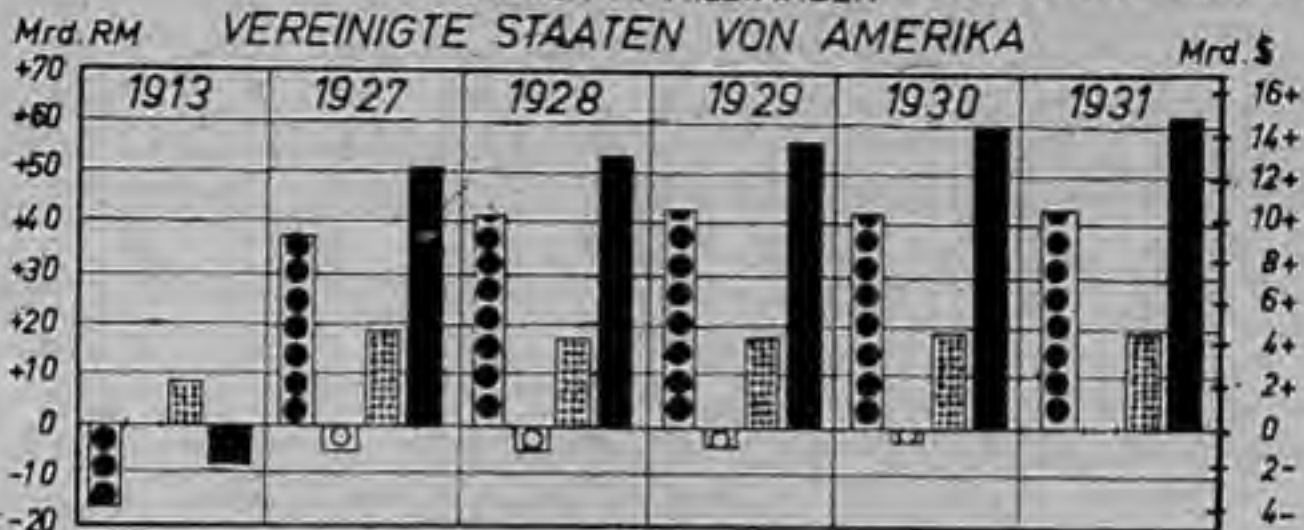
KAPITALBILANZ

SALDEN IN MILLIARDEN

Capital Balance

Credit and Debit Balances in 1000 Million Reichsmarks or \$ resp.

II



Langfristige Guthaben (+) bez. Ver-schuldung (-)

Kurzfristige Guthaben (+) bez. Ver-schuldung (-)

Deckungsmittel Bestand (Gold u. Deckungs-devisen)

Überschuss der Aktiv (+) bez. Passiv (-) Posten

Long-Term Deposits (+) or Long-Term Debts (-)

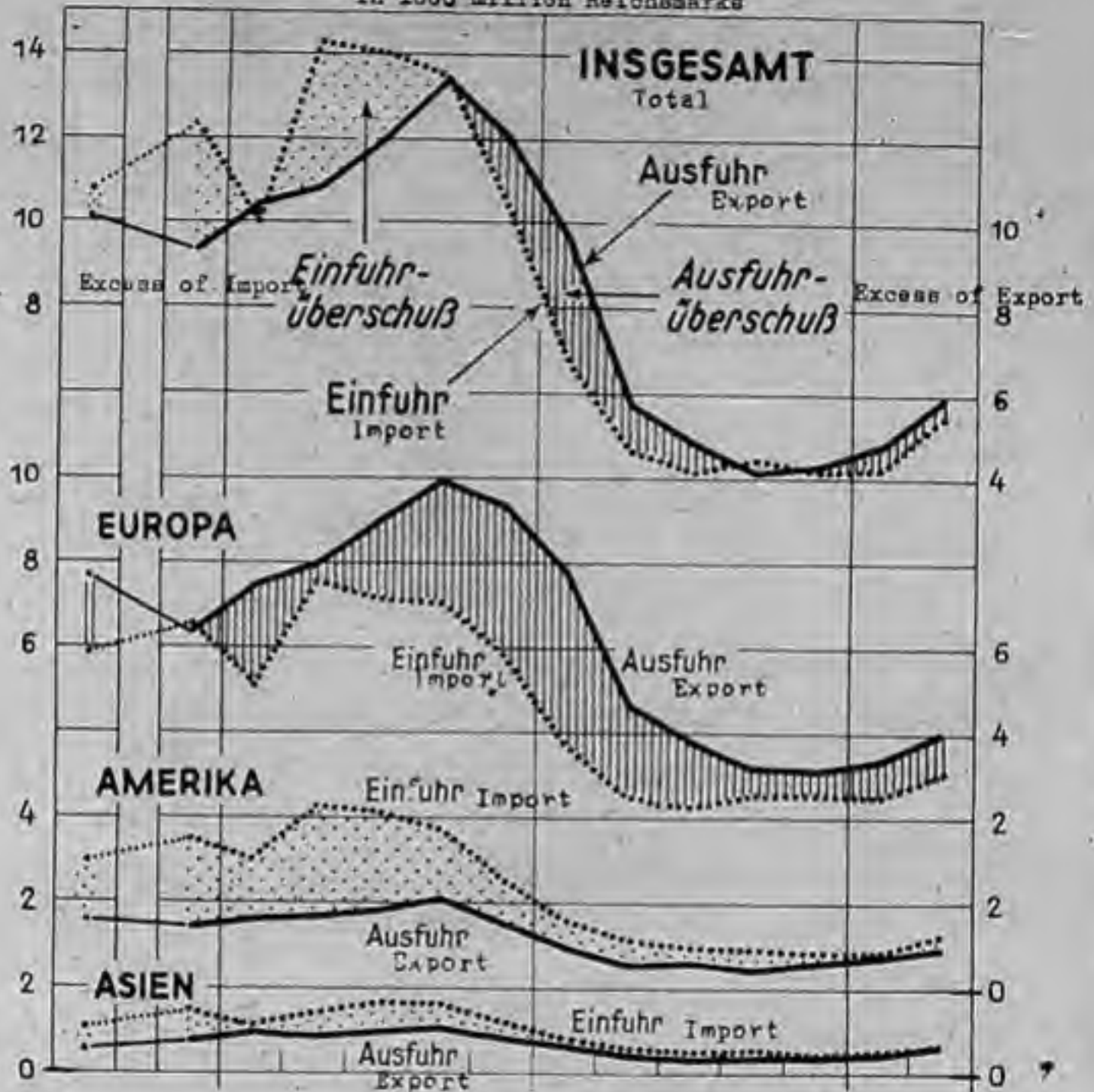
Short-Term Deposits (+) or Short-Term Debts (-)

Cover of Notes (Gold and Foreign Exchange)

Excess of Credit Items - (-) Excess of Debit Items - (+)

Die Entwicklung des deutschen Außenhandels

Development of the German Foreign Trade
 insgesamt und nach Erdteilen
 total and specified as per Continents
 in Milliarden RM
 in 1000 million Reichsmarks

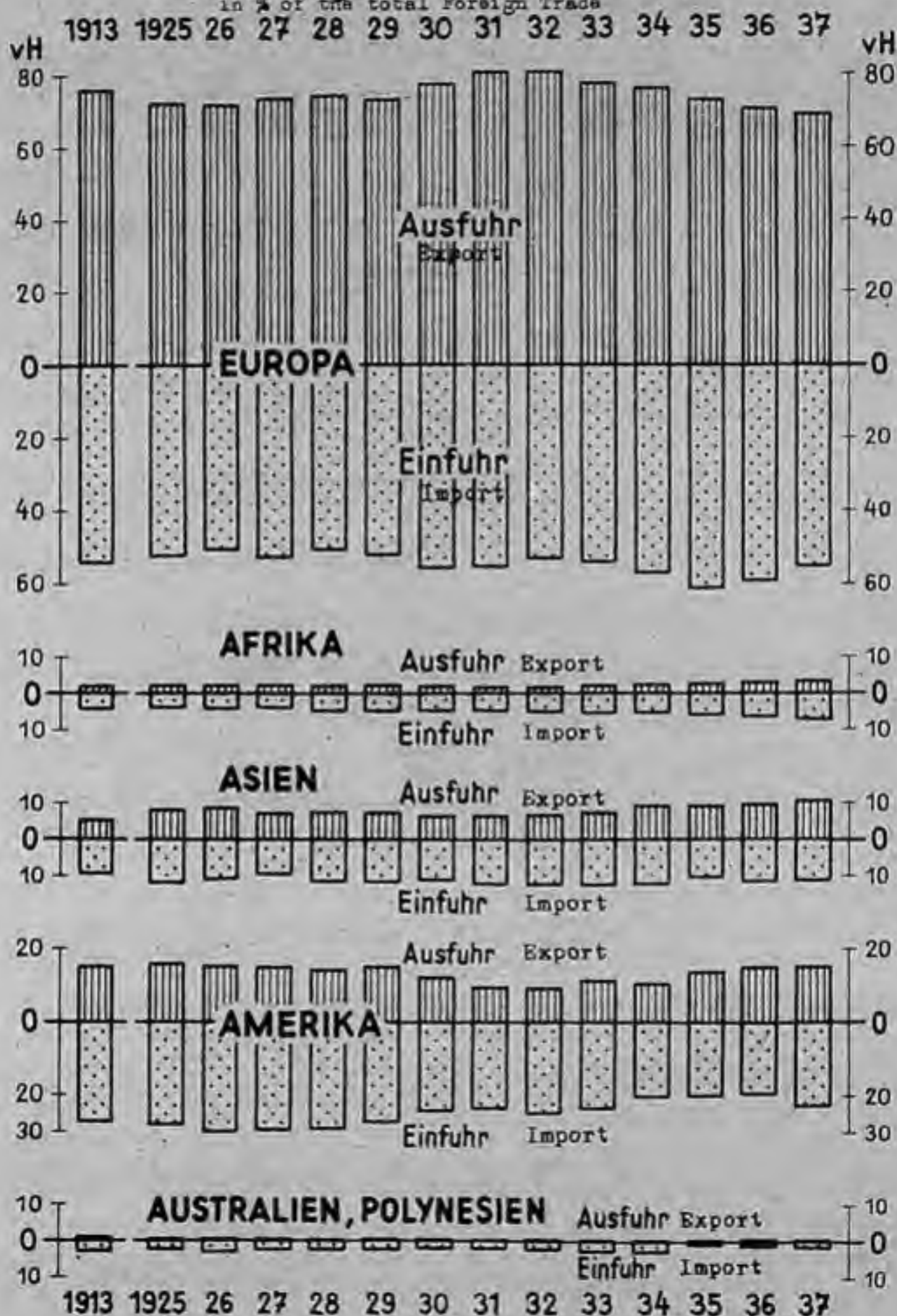


5-facher Maßstab 5-fold Scale



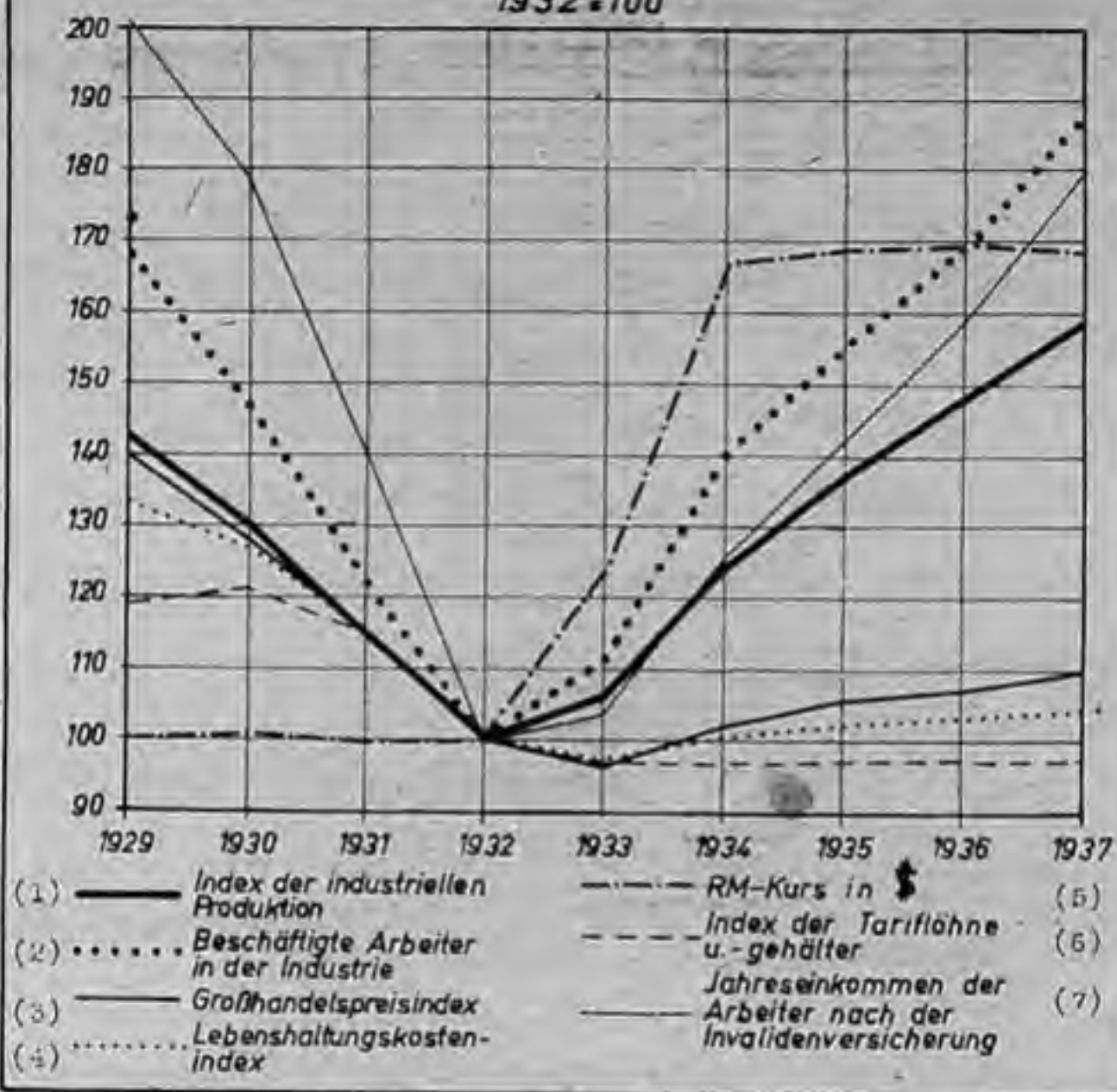
Die deutsche Ein- und Ausfuhr nach Erdteilen

German Foreign Trade specified as per Continents
in vH der gesamten Ein- und Ausfuhr
 in % of the total Foreign Trade



KURVEN ZUR DEUTSCHEN WIRTSCHAFTSENTWICKLUNG

Diagram of the Development of the German Economy
1932=100



- (1) Index of Industrial Production
- (2) Workers employed in Industry etc.
- (3) Wholesale Price Index
- (4) Cost of Living Index

- (5) RM Exchange Rate in \$
- (6) Index of Tariff Wages and Salaries
- (7) Annual Income of Workers according to the Old Age and Disability Insurance for Workers

Tom Bragg Jnr
(Burrish)

Case 6
Defense

TRANSLATION OF TRIAL BRIEF JACHNE
OFFICE OF CHIEF OF COUNSEL FOR WAR CRIMES

Trial Brief

for the Defendant Friedrich Jachne

submitted to

the Military Tribunal VI, Nurnberg

in June 1948

by Dr. Hans Fribilla

Attorney-at-Law.

orig



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Count I: Preparation of wars of aggression.

I. Personal data.

a) Jachne's activity with the I.G.

Just as is done in every chemical factory the chemist decided at the I.G. whether or not and what things were to be produced and which production plants were to be erected. The technical engineer in turn was only asked as to how these production plants were to be constructed, and with regard to so-called general plants, what buildings and installations for power supply, transportation, etc. were required for the planned production projects and how these were to be constructed. (Transcript Jachne, P. 10029/30 German, P. 9895/6 English).

These statements show the limits which were set to Jachne's activity in regard to his tasks within the I.G.

- 1) Jachne belonged to the Vorstand as a deputy member since 1934 and as a regular member since 1938, and he was the only engineer in this body. This position did not have the effect, however, that he became thereby the superior of all engineers of the whole I.G. or that he would have had to decide independently on the construction of general plants. This would have been absolutely contradictory to the committee system prevailing within the I.G. (Transcript Jachne, P. 10030 & 10145 German, P. 9897 & 10008 English; affidavit Gohardt, Jachne Doc. 45, Exh. 3, Book 3, P. 9 to 11). Jachne's title of "Chief Engineer" had nothing to do with his position as member of the Vorstand. This title was only a local designation of the leading engineer of the Hoechst plant at the time. (Affidavit Gohardt, Doc. Jachne 45, Exh. 3, Book 3, P. 9). If it is furthermore said in the Indictment (P. 4 German, P. 3 English) that Jachne had been responsible for the erection and the installation of

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the plants, this is without doubt not correct as is shown by the foregoing statements.

It will not be necessary to comment here on the over-all responsibility of the Vorstand, since this question was already discussed in detail. I should only like to point in short to the fact that the extent of the enterprises, the work load of the individual, the difficulty, multiplicity and variety of the scientific, technical and commercial spheres of activity, the far reaching professional specialization of the individual member of the Vorstand, and last but not least, the historic development of the I.G., brought it about that every member of the Vorstand had to rely on the persons responsible for making the reports, the committees and their sub-committees, and that, on the other hand, the individual member of the Vorstand acted independently in his own field (Ressort). In view of the short duration of the meetings and the enormous amount of work which had to be dealt with during them, it would indeed have technically been impossible to proceed otherwise. (Transcript Jachne, P. 10026/7 German, P. 9893 English; ter Meer P. 6887 ff German P. 6762 ff English; Affidavit Wurster, Doc. Wurster 304, Exh. 30, Book Wurster 1, P. 35; Affidavit Pistor, Doc. Oster 16, Exh. 19, Book Oster 1, P. 43).

2.) Jachne's activity in the TeA (Technical Committee).

Since 1933 Jachne also belonged to the TeA. At the beginning he was the only engineer there, later on two more engineers became members of the TeA.

The tasks of the TeA and its numerous sub-committees were already explained in detail. (Transcript ter Meer, P. 6905 German, P. 6779 English; Affidavit ter Meer, Doc. MI-5187, Exh. 334, Book 12, Page 136 ff German, P. 158 ff English). Its chairman, ter Meer, considered it to be his principal task

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to give its members information in the scientific field and about what is going on in the plant. This giving of information took up half the time of the meetings. (Transcript ter Meer P. 6906 German, P. 6760 English). The TeA had furthermore to decide on applications for credits. These applications for credits were, however, thoroughly deliberated in detail in committees and sub-committees, as well as in the meetings of the Sparten. In the meetings of the TeA themselves they could only be dealt with summarily. (Transcript ter Meer P. 6907 & 6912 German, P. 6761 & 6765 English; Affidavit Wurster, Doc. Wurster 304, Exh. 30, Book Wurster 1, P. 36/7). This was required by lack of time, since in one meeting alone, i.e., 150 pages of applications for credits amounting to 95 million Reichsmarks had been submitted! (Transcript ter Meer P. 6913 German, 6766 English).

After 1933, and particularly during the war, this influence of the TeA on the investments changed considerably. For the State encroached in an increasing measure upon free economy by means of government orders (Auflagen). During the war practically all investments were the result of orders given by authorities so that the erection of the plants was frequently already started or they were even in operation before the TeA got knowledge of it at all. In practice the TeA had become during the war a body which received its orders from the State concerning investments which were authorized by the latter alone. (Transcript Jackme P. 10028 German, P. 9894 English).

The special task of the defendant Jackme in the TeA was handling technical matters of engineering, making reports on engineering problems, on research work and experiments in this field, and on questions pertaining to power supply, as well as dealing with credits pertaining to technical engineering. (Transcript Jackme P. 10029 German, P. 9895 English).

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3.) Activity of Jaehne in the Teko. (Engineering Committee).

These engineering-technical questions belonged to the sphere of tasks of the Teko, one of the 30 commissions of the TeA. ^(Technical Committee) The defendant Jaehne was chairman of the Teko since 1931, which was composed of the 7 chief engineers of the Sparten and large plants. The Teko was, as the name already suggests, a commission, that is a sort of work-team of the leading engineers. Therefore Jaehne was not perhaps a superior of the other commission members, but solely "primus inter pares." (Jaehne D.P.S. 10030 S.P.S. 9897, Affidavit Gotthardt Doc. Jaehne 45 Exh. 3 Vol. 3 P. 10/11).

Among other things it was one of the tasks of Teko to give an opinion to credit applications for new installations. However this opinion was expressed only from the engineering-technical point of view and kept itself within these narrow limits. In case of new plants for production the Teko did not take a position regarding the question, whether the plant should be built. To take a stand to this question was rather within the competence of other commissions of the TeA. The Teko only examined whether the proposed construction was practical. In the case of general plants, however, that is plants for power and water supply, transport installations, store rooms etc., the Teko did examine beyond that, what general installations were necessary for the planned production. (Business rules of TeA Doc. NI 7603 Exh. 342 Vol. 12 P. 3. 226 E.S. 224, Affidavit Ter Meer Doc. NI 5157 Exh. 334 Book 12 D.S. 138 A.S. 159, Affidavit Wagner Doc. NI 7768 Exh. 183 Vol. 7 D.S. 69 E.S. 37, Jaehne D.P.S. 10029 f. E.P.S. 9895, Affidavit Gotthardt Doc. Jaehne 45 Exh. 3 Volume 3 P. 10/11).

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However to give opinions on credit applications, frequently mentioned by the Prosecution, was by no means the main activity of the Teko. As the chief association of engineers it had to organize the uniform direction of all ^{engineering} matters, to utilize the experiences of individual plants for the benefit of other plants, to take care for training new engineers and specialized workers, as well as to give an opinion to recommendations for the promotion of engineers. But above all it had to advance research in the engineering-technical field, a task to which Jachne as chairman of the Teko devoted himself with particular emphasis. (Jachne D.P.S. 10029 A.P.S. 9895/6). In the engineering-technical experimental department at Hoochst the newest inventions in Physics were examined, practically utilized and made available for application. (Jachne D.P.S. 10025 A.P.S. 9891).

Another very important task of the Teko was the supply of the I.G. plants with electrical power, since I.G. had a power consumption amounting to 12% of the power produced in all public power plants in Germany. (Jachne D.P.S. 10025 A.P.S. 9891).

These large purely engineering-technical tasks of research and instruction of other engineers for the benefit of the whole particularly occupied the defendant Jachne as the chairman of Teko and consumed almost exclusively all of his energies and time.

b) Jachne's relationship to the Party.

Jachne devoted himself completely to these extensive tasks in the engineering scientific field. Therefore he had neither the ambition nor time to be also active in other fields, especially not in the field of politics in the Third Reich.

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Jachne's political attitude has been evidenced by numerous affidavits. Prior to 1933 he belonged to the Deutsche Volkspartei, that is the party which under the leadership of Foreign Minister Stresemann worked for and also accomplished the understanding with the western powers. (Affidavit Schwarzhaupt Doc. Jachne 42 Exh. 2 Vol. 3 P. 1, affidavit Einsler Doc. Jachne 44 Exh. 12 Vol. 3 P. 6).

After dissolution of this party (1933) Jachne joined a group of former members of the Volkspartei, who met secretly and strongly criticized the measures of the Government. (Affidavit Schwarzhaupt Doc. Jachne 42 Exh. 2 Vol. 3 P. 1.).

The defendant Jachne later joined the NSDAP. This happened as late as 1938 and upon direct demand of the Gauleiter. Jachne then was confronted with the alternative, either to step back and make room for someone else more pliable to the wishes of the Party, or to enter the Party formally and to remain at his post and by that to promote his work and help others. Any sober reasoning would have led to the decision to choose the second alternative. (Jachne D.P.S. 10038, 10154, D.P.S. 9903/4, 10016, Affidavit Helfrich Doc. Jachne 1 Exh. 1 Vol. 1 p. 2, Affidavit Eckhardt Doc. Jachne 3, Exh. 5 Vol. 1 P. 8.).

Through this formal step Jachne's political conviction did not change in the least. Jachne did not conceal his views. He exercised criticism not only among reliable friends, but also among other members of the plant in regard to measures of the Party and made unfavorable remarks about the Party and its rulings, which would have brought him into the KZ, if they had become known. (Affidavit Helfrich Doc. Jachne 1 Exh. 1 Vol. 1 P. 1f,

Affidavit Wucherer Doc. Jachne 2 Exh. 2 Vol. 1 P. 5, Affidavit Eckhardt Doc. Jachne 3, Exh. 5 Vol. 1 P. 8, Affidavit Brisbois Doc. Jachne 4 Exh. 7 Vol. 1 P. 10, Affidavit Klesskalt Doc. Jachne 6 Exh. 9 Vol. 1 P. 15, Affidavit Spaidel Doc. Jachne 7 Exh. 10 Vol. 1 P. 18, Affidavit Humann Doc. Jachne 8 Exh. 11 Vol. 1 P. 20/21, Affidavit Einsler Doc. Jachne 44 Exh. 12 Vol. 3 P. 7, Affidavit Gebhardt Doc. Jachne 45 Exh. 3 Vol. 3 P. 9, Affidavit Riess, Doc. Jachne 53 Exh. 23 Vol. 3 P. 32). Even at affairs of the Division Industry of the Chamber of Commerce and Industry Hessen (then Chamber of Economics Hessen) he expressed openly his rejection of the principles of the NSDAP "with great personal courage" (Affidavit de la Roi Doc. Jachne 43 Exh. 4 Vol. 3 P. 4). If during technical meetings of the directors of the plant community Maingau some individual man close to the Party tried to let go a talk of political character, Jachne understood to make him ridiculous through "extremely sharp, ironically-sarcastic remarks", which "left no room for doubt as to the realistic attitude of Herr Jachne towards National Socialism and its evil phenomena." (Affidavit Hagenboecker Doc. Jachne 48 Exh. 19 Vol. 3 P. 20).

This attitude of Jachne, who never used the greeting "Heil Hitler", never concluded his festival speeches with the, at the time, matter of course "Sieg Heil" to the Fuehrer and who did not participate in Party affairs, was so clear that it was generally known throughout the plant that Jachne was opposed to the Party (Affidavit Eckhardt Doc. Jachne 3 Exh. 5 Vol. 1 P. 7, Affidavit Helfrich Doc. Jachne 1 Exh. 1 Vol. 1 P. 2, Affidavit Brisbois Doc. Jachne 4 Exh. 7 Vol. 1 P. 10.).

With this basic attitude it is explicable that Jachne has helped politically and racially persecuted persons, as it is shown, for example, by the cases of Mehl, Dietz, Popp and Klesakalt. (Affidavit Holfrich, Doc. Jachne 1, Exh. 1 Volume 1, Pages 1 and 2; Affidavit Eckhardt, Doc. Jachne 3, Exh. 5, Volume 1, Page 8, Affidavit Klesakalt, Doc. Jachne 6, Exh. 9, Volume 1, Page 15f.). Beyond that, however, his policy in regard to personnel expressed his attitude clearly and positively. Thus, as head and technical manager of the apprentice workshop he retained the witnesses Brisbois and Voith, whose dismissal had been requested by the Party, as long as possible. (Affidavit Brisbois, Doc. Jachne 4, Exh. 7, Volume 1, Page 10 Affidavit Voith, Doc. Jachne 5, Exh. 8, Volume 1, Page 12). Not only did he keep the well-known anti-Nazi Hunner, in the plant but he even promoted him to chief engineer and gave him preference to an ardent Party member who might have been qualified just as well. (Affidavit Klesakalt, Doc. Jachne 6, Exh. 9, Volume 1, Page 15f, Affidavit Eckhardt, Doc. Jachne 3, Exh. 5, Volume 1, Page 9, Affidavit Hunner, Doc. Jachne 8, Exh. 11, Volume 1, Page 20). Jachne had employees in the Chamber of Industry and Commerce who undoubtedly were in opposition to the Party. (Affidavit de la Roi, Doc. Jachne 43, Exh. 4, Volume 3, Page 5). Eventually he resolutely suggested not to employ a man who had attracted attention in Paris as a Nazi propagandist. (Affidavit Wachrer, Doc. Jachne 2, Exh. 2, Volume 1, Page 5).

This courageous oppositional conduct of Jachne was known in the Party as it is shown by the Party's attitude towards Jachne. Thus, all attempts to obtain for Jachne, on the occasion of his 50th birthday, the title of a Doctor h.c. for his achievements in the field of chemical engineering, were frustrated solely by the resistance of the Party (Affidavit Eckhardt, Doc. Jachne 3, Exh. 5, Volume 1, Pages 7 and 8). Neither was he appointed to "armament commissioner" as were all other heads of the industrial departments, and finally he was

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~~ignored~~ ignored in respect to invitations to the social affairs of the *Genleitung* which the other authoritative persons of the economy had been asked to attend. (Affidavit de la Roi, Doc. Jachne 43, Exh. 4, Volume 3, Page 4).

Under these circumstances it is logical that after 1945 Jachne received the following notification by the Military Government: "May retain present position" and that he was classified by the Spruchkammer in Group V as "exonerated". (Jachne German Records Page 10038, English Records Pages 9903, 9905).

c) Positions in the Economy.

It was because of Jachne's qualifications as a technician and his knowledge of economic matters that in the course of time he held a number of honorary positions, most of them already prior to 1933. Thus, he was the chairman of the technical committee of the Employer's Liability Accident Insurance Association which had the task to prevent labor accidents in the chemical industry. He was deputy chairman of the Association of Technical Supervisory Boards which were dealt with accident prevention in steam-boiler plants. He was furthermore active in many other technical bodies. (Jachne, German records, pages 10031/32, English records, page 9898).

In order to explain that the defendant was involved in the preparation for aggressive wars the Prosecution points to the fact that he was a military economy leader (*Wehrwirtschaftsfuehrer*). However, he was given that title only as late as 1943 at a time when it was no longer possible to evade his appointment, consequently it cannot be evaluated any longer as a recognition for distinguished service. (Affidavit de la Roi, Doc. Jachne 43, Exh. 4, Volume 3, Page 3). Neither was he appointed by the OKW, but by the Reich Minister for Economics upon suggestion of the local regional distribution office. (Affidavit de la Roi, Doc. Jachne 43, Exh. 4, Volume 3, Page 3, Affidavit Dr. Graf, Doc. Schneider 76, Exh. 32, Volume Schneider 3, Page 93.).

However, the regulations concerning the appointment of the military economy leaders after checking their political trustworthiness, which are quoted in the Affidavit General Warlinont (Exh. 490, NI 3812, Volume 25, German page 133 ff, English Page 71ff), only refer to the military economy leaders appointed by the OEW and not to those appointed by the Reich Minister for Economics. (General Warlinont, German Records Pages 2306, 2307, English Records Pages 2313/15).

In any case at the time of Jachne's appointment, this appointment only meant the conferment of an insignificant title. (Warlinont, German Records Page 2306, English Records, page 2315, Jachne, German records, Page 10033, English Records, Pages 9899/1900). At any rate this title did not involve any connections with the Wehrmacht.

The name of the defendant can be furthermore found on a list of 72 technical commissioners whom the Plenipotentiary General for Chemistry in July 1943 put at the disposal of the Speer Ministry as advisers in special questions of the chemical production.

(Exh. 475 NI 5984, Volume 21, German page 31, English Page 25, Kirsch German Records, Page 5147, English Records, Page 5124). Jachne is designated on this list as advisor "for own heating facilities".

In this appointment, however, he has never been engaged in any advisory capacity since the technical commissioners have never asked for an advice. (Affidavit Dr. Pohland, Doc. Wurster 194, Exh. 78, Volume Wurster 2, Page 72). Jachne in particular has never started to engage in any activity. (Jachne, German records, pages 10033/34, English Records, Page 9900).

In view of his position and reputation Jachne obviously was offered many honorary positions in the economy. Wherever there was a chance of rescuing something for the free economy and prevent the appointment of Nazi sympathetic elements, Jachne did not refuse his help. (Affidavit Eckhardt, Doc. Jachne 3, Exh. 5, Volume 1, Page 8).

Thus, Jachne was also appointed as head of the industrial section of the Hesse Chamber of Industry and Commerce (at that time Economic Chamber) which was the representative body of the economy.

He was appointed not by any chance upon the suggestion of the NSDAP but upon suggestion of industry which regarded him as particularly trustworthy. (Affidavit de la Roi, Doc. Jachne 43, Exh. 4, Volume 3, Page 2, Jachne, German Records Page 10035, English Records, Pages 9900/01). The Party on the other hand did not trust him. It is already shown by the fact that he was not appointed to armament commissioner although the heads of the industrial departments were to be given this title on the basis of a decree by Speer. An exception was made with Jachne, however, because he was regarded as politically not trustworthy in spite of his formal membership in the Party. (Affidavit de la Roi, Doc. Jachne 43, Exh. 4, Volume 3, Page 4).

Especially in his position as head of the Industrial Department was it possible for him to assert his influence beneficially and attempt to prevent too great a damage. Thus he again and again called the industrialist's attention to the necessity to give the foreign workers a decent and exemplary treatment. (Affidavit de la Roi, Doc. Jachne 43, Exh. 4, Volume 3, Page 5, Jachne German records Page 10036, English records Pages 9900/01). He actually was successful in the struggle for the youth as regards the field of training apprentices and he accomplished that the training of apprentices was left to the plants and was not carried out by the Party (German Labor Front - Dina). (Jachne German records Pages 10042/43, English records Pages 9909/10).

The position of local head of the Industrial ^{out} ~~Department~~ was automatically connected with the membership in the "Advisory Board of the Reich Group Industry". This board was a body composed of representatives of the industry which, however, was left without any real influence in view of the prevailing Fuhrer principle. It was called together only 3 to 4 times and the members were by no means asked to express their opinion. On the contrary, one merely disclosed the opinion of the government in the form of lectures.

(Affidavit de la Roi, Doc. Jachne 43, Exh. 4, Volume 3, Page 3, Jachne German records, pages 10035/36, English records, pages 9901/02).

The Reich Group Industry had nothing to do whatsoever with questions of mobilization. One must not mistake it for the "Economic Groups". (Jachne, German records, page 10035, English records, Page 9901).

II. Jachne's activity in the Hoechst Plant.

Having described Jachne's activity in all branches of the I.G. and in public, I now come to his work in the Hoechst Plant.

a) Position as deputy Betriebsfuhrer.

In 1932 Jachne was transferred from Leverkusen to Hoechst as chief engineer in order to modernize the ^{exceedingly} old-fashioned plant with as little equipment as possible. In Hoechst Jachne was in charge of the entire engineering departments of the Hoechst Plant (Jachne, German records, page 10035, English Records Page 9890). In 1938 - that is shortly before the war - Professor Lautenschlaeger became the head of the Hoechst plant and the plant community Hainstadt. Jachne was appointed his deputy.

The regional coordination of the individual plants to the plant communities was effected solely for the purpose of improved mutual support and coordination of production. The individual plants remained completely independent and had their own independent Betriebsfuhrer. Professor Lautenschlaeger in particular, did not assert any particular influence on the plants under his direction.

(Affidavit ter Meer, Exh. 333, Doc. NI 5186, Volume 12, German Page 95, English Page 114, Affidavit Hagenbocker, Doc. Jachne 48, Exh. 19, Volume 3, Page 19, Affidavit Dr. Glessler, Doc. Lautenschlaeger 13, Exh. 28, Volume Lautenschlaeger 1, Page 33, Jachne German records, Page 10031, English records, Page 9806).

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As deputy manager of the plant Hoechst Jachno was informed about all questions pertaining to the management, however only in broad outlines. In absence of the plant manager, Professor Lautenschlaeger, he decided urgent matters independently. (Jachno D.P.S. 10031 E.P.S. 9898).

b) The plant Hoechst and the Party.

The activity of the works management Hoechst can be gleaned from the records of the technical meetings of directors at Hoechst, that are all available and have been utilized by the Prosecution for its purposes. The works management had nothing to conceal and therefore did not have any records destroyed, since it had no such interest. (Affidavit Heilbrunn NI 15096, Exh. 2348, Vol. 94 D.S. 80 E.S. 76).

From this extensive collection of records the Prosecution has submitted brief excerpts purporting to incriminate my client inasmuch as they allegedly reveal a close connection between the plant Hoechst and the Party.

It is to be premised that the material presented refers to the years 1933/34, that is long before Lautenschlaeger and Jachno took over the management of the plant. But it seems to me that the material presented in its objective content and in its scantiness, rather speaks in favor of the former works management at Hoechst than against it, considering the pressure that at the time generally was brought to bear upon the plants.

Now let us consider the individual Prosecution Documents.

In the Prosecution Exhibit 85 (NI5869, Doc. Bk. 4 D. S. 108 E.S. 82) it says that the bechelor hour will be made available for billoting of Goutag (District Party festival) participants, that action has been taken against the billoting of the German greeting (Sept. 1933 yet.

In Exh. 86 (NI 5869 Book 4 D.S. 115 E.S. 83) it says that the leading gentlemen of the plant Hoechst have been invited to a series of lectures by a Professor Werner and that they would attend. Jaehne on the witness stand has stated that no close connection to the Party could be deduced from these documents. The billoting of Gestap participants was necessary because there were no Totola in Hoechst, and generally participants of any meetings had to rely on the availability of the bechelor home. The ridiculing of the German greeting had become so general at the plant Hoechst that the management had to do something officially or else it would have incurred investigation by the Gestapo. If finally the leading men at the plant received a summons to attend a series of public lectures then this only proves the assumption by the Party that without such a summons it would not even have occurred to the gentlemen to go to these public lectures. (Jaehne D.P.S. 10041/2 E.P.S. 9907/8).

If further the Exh. 87 (NI 5872 Vol. 4 D.S. 116 E.S. 84) and Exh. 88 (NI 5873 Vol. 4 D.S. 117 E.S. 85) reveal that the plant has resigned itself to the participation of plant members in the SA training of men and in military sport camps, then for anyone familiar with the conditions of that time it is clear that the works management in the situation of 1933 and 1934 could not possibly have acted otherwise.

According to Exh. 89 (NI 48 40 Vol. 4 D.S. 118 E.S. 86) the Toko (Engineering Committee) considered the participation of apprentices in training courses of the "German institute for technical training" ("Diata") bearable, since the emphasis in this training was ^{not} laid on the technical field, but on the field of world outlook. This exhibit leads us into the field of struggle around the apprentice education Jaehne had succeeded in this struggle

to retain technical education for the plant. Merely "indoctrination in world-outlook matters" was gladly left to "Dinto", if only the apprentices could be kept for the whole day in the plant and there be influenced accordingly. (Jachne D.P.S. 10042/3 E.P.S. 9909/10).

Just here in this field the true attitude of the works management at Hoechst is revealed, which by no means can be gathered from the mutilated documents of the Prosecution, resembling

a photo - montage. According to Proe. Exh. 177 (NI 5884 Vol. 7 D. S. 53 E.S. 29) the report was made at a meeting of directors at Hoechst that it was the wish of the Party to have a follower of the present government appointed manager of the apprenticeship. But actually Jachne has retained Cert. Eng. Voith as manager and foreman Bribois as general foreman of the apprentice shop against the pressure of the Party. But both doubtlessly were not sympathizers of the government and of Party members (Jachne D.P.S. 10043 to 10045 E.P.S. 9909/10, Affidavit Voith Doc. Jachne 5 Exh. 8, Vol. 1, P. 12, Affidavit Bribois, Doc. Jachne 4 Exh. 7 Vol. 1 P. 10). Also Jachne did not bow to the demand of the DAF (German Labor Front) to hire only Party members or members of the DAF as apprentices. (Affidavit Voith Doc. Jachne 5 Exh. 8 Vol. 1 P. 12, Affidavit Bribois Doc. Jachne 4 Exh. 7 Vol. 1 P. 10). It must be considered that this struggle was not without danger to the plant, since the DAF ^{through} the labor offices could have at any time prevented further ^{allegation} of apprentices, and thereby could exert considerable pressure.

Similar pressure naturally could also be exerted by the Party in the question of contributions. In regard to contributions for the Party by the I.G. as a whole the Defense ^{Witness} had already presented its opinion. I should like to speak here only of the contributions by the plant Hoechst. The plant Hoechst has ^{made} no contributions to the Party.

with the exception of small amounts during collections for charity purposes by the WHE (Winter Aid Campaign), which also amounted to 2000 RM per year at the most, this is an extremely small amount compared to the size of the plant and its contributions for other purposes like clubs and the like amounting to 40,000.-

El. postyear (Affidavit Flach Doc. Lentenschlaeger 20 Exh. 35 Vol. Lentenschlaeger 1 P. 49).

c Air Defense.

Turning now from the relations of the plant Hoechst to the Party to the relations of the plant to the Armed Forces, I must point out that to this point the Prosecution has submitted no essential documents, except in the question of air defense.

I wish to stress that air defense was permitted Germany since 1926 by the victorious powers of World War I, that it represents a purely passive measure of protection like fire defense and protection against catastrophes and that, therefore, it can in no way be part of the evidence for deliberate participation in the preparation of an aggressive war. (Poehn D.P.S. 101 88 E.P.S. 10049). I should like to state further that the other European States have since 1926 built up their air defenses with governmental aid on the largest scale, while only Germany in spite of its extremely vulnerable position in the midst of highly armed neighbors and in spite of the absence of any air force remained entirely unprotected in this field. (Doc. ter Meer 256 Exh. 56 Book ter Meer 2, P. 23 - 25 Air defense was introduced in Germany already prior to 1933, namely 1931. (Poehn D.P.S. 10189 E.P.S. 10050). May I nevertheless in regard to these general questions of air defense refer to

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the statements of my colleague Dr. Berndt and limit myself merely to the accusations raised especially against the plant Hoochst and particularly against Jaehne.

Within industry air defense matters fell within the field of engineering technology. Within the I.G. it came under the competence of the Toko. In June 1933 Hoochst was assigned to be ~~central~~ post (Vorort) of industrial air defense within the I.G.

(Exh. 172 NI 6993 Vol. J.P.S. ff E.S. 21). The reasons were that I.G. in the field of air defense was very reluctant. Already 1933 coercive measures were threatened ¹ by the authorities.

(for Meer D.P.S. 6955 E.P.S. 6887). It was along these lines that Jaehne upon suggestion of ter Meer was charged with the direction of air defense matters. Jaehne was to see to it that individual plants upon local pressure by Party or Armed Forces should not stop out of line and spend too much (for Meer D.P.S. 6957, E.P.S. 6888/9, Jaehne D.P.S. 10049 E.P.S. 9914, Affidavit Poehn Doc. for Meer 251 Exh. 51 Book for Meer D P. 62).

In fact Jaehne has repeatedly protested against demands by authorities and tried to reduce costs wherever he could. (for Meer D.P.S. 6951 E.P.S. 6888/9, Struss D.P.S. 1846, E.P.S. 1860).

This is even shown quite clearly by the documents which the Prosecution has presented. So according to Exh. 182 (NI 7768 Vol. 7 D. S. 65 E.S. 37) requests for 50,000 RM and 42,000 RM were rejected and according to Exh. 174 (NI 4838 Vol. 7 D.S. 46 E.S. 23) request in the amount of 192,000.- RM. According to Exh. 178 (NI 4841, Vol. 7 D. S. 55 E.S. 31) and Exh. 179 (NI 4451, Vol. 7 D.S. 59 E.S. 32) Jaehne considered the demands for air defense too high, so that contact was to be made with the central Reich authorities.

All these documents show that Jasne was holding back, wherever he could. And in view of this what was actually done? According to Exh. 172 (NI 6973 Vol. 7 D.S. 40 Exh. E.S. 21) air defense measures were to be carried out only insofar as they were possible without cost. According to Exh. 173 (NI 5887, Vol. 7 D.S. 44 E.S. P. 22) RM 80 were spent for the entire I.G., that is about RM 1.- per head of the employee staff numbering about 80,000 people. With these 80,000 RM it was planned to protect 80,000 employees and material values amounting to 3 Billion Reichsmark. (Jasne D.F.S. 10047 E.P.S. 9912/4).

I believe that these figures speak a clear language.

In Hoochst itself very little was done in regard to air defense. The only bomb resistant bunker came into being only in the last year of the war and was by far insufficient. In regard to air defense, Hoochst at the start of the war was not prepared for war at all. (Pohl D.F.S. 10290 E.P.S. 10050). This shows best that the works management Hoochst did not think at all of an imminent war; otherwise its conduct would have been criminally negligent.

d) Mobilization plans

The defendants have been charged with having supplied data for the drafting of production plans in case of war, the so-called quota-plans in order to prove their participation in the preparation of aggressive wars. Also in this regard it is my view that this activity customary in all countries and practised in Germany on the example of the USA, does not even furnish sufficient proof for the knowledge about a planned war or much less of an aggressive war, not to speak of the deliberate preparation for war.

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Therefore, I can also be brief on this point, Since the files of the Hoechst plant were undestroyed and at the disposal of the Prosecution - in the course of the years considerable paper had naturally accumulated (Heilbrunn affidavit HI-15076, Exh. 2248, Book 94, German page 80, English page 76) - a large number of documents concerning the Hoechst plant have been admitted which refer to the question of production in the event of war. These documents consist mostly of letters which are sent to Hoechst by government authorities and by Abteilung VI at the order of government authorities, and of replies by the Hoechst plant to such inquiries. None of these documents reveals any preparation by the Hoechst plant for a war of aggression. As a matter of fact, there were only two contracts for war deliveries in the entire I.G. Farben Works Combine and these were for Hoechst with 375 tons per month of FS solution and for Griesheim with 10,000 tons of dinitrobenzol (Exh. 210, I-6879, Book 8, German page 51, English page 49 and Exh. 211, I-6878, Book 8, German page 54, English page 51, Kirchel German transcript page 10160, English transcript page 10022). These were, therefore, only very insignificant amounts in comparison with the rest of the production of these plants. Jaehne's work in this connection consisted merely of stating what amounts of personnel, coal and electric power were needed for the production required of Hoechst by the quota plans. Jaehne, German transcript page 10050/51, 10150, English transcript page 9915, 10013).

2. Production of the Hoechst Plant.

In connection with the preparations for war which in its opinion were made there, the Prosecution has also occupied itself with the production of the Hoechst plant. This point, too, has been cleared up in detail by the hearing of the evidence.

The Hoechst plant is one of the oldest plants of the I.G. and was in part quite obsolete. In many fields it did not experience the same strong progressive development as did other large chemical plants, even those outside of the I.G. Jaehne was the first to succeed in modernizing the plant somewhat. (Struss affidavit, Prosecution Exh. 391, NI-9487, Book 15, German page 93, English page 84, Gebhardt affidavit, Jaehne Doc. 45, Exh. 3, Book 3, page 11.)

Hoechst primarily manufactured large quantities of inorganic products, such as sulphuric acid, hydrochloric acid, nitric acid, chlorine, caustic soda solution, likewise many intermediate products, especially intermediate products for dyestuffs, but also high quality dyestuffs themselves. Furthermore, it possessed the largest factory of solvents in Germany and manufactured enamels and plastics. In the nitrogen field it produced equally large quantities of calcium nitrate as fertilizers. (Jaehne, German transcript page 10051, English transcript page 9916, Struss affidavit, Exh. 391, NI-9487, Book 15, German page 125, English page 109.) Of special importance were the achievements of Hoechst in the field of drugs in its pharmaceutical department, which had attained a world-wide reputation under the direction of the defendant Lautenschlaeger through its anodynes and medical drugs such as pyramidon and salvarsan and through its researches and achievements in the field of hormones and vitamins. (Jaehne, German transcript page 10051, English transcript page 9916). After 1933 the investments in the Hoechst plant were unusually small. During the 12 years from 1933 to 1945 only about 26 millions were invested, that is, less than 1% annually of the entire peacetime value of Hoechst. (Jaehne, German transcript page 10053, English transcript page 9918). The investments therefore barely amounted to one-sixth of the usual depreciations.

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Even in wartime no essential changes occurred in the manufacturing program. (Gebhardt affidavit, Jaehne Doc. 45, Exh.3, Book 3, page 10). It has already been pointed out that there was only one contract for war deliveries in Hoechst for 375 tons of FS solution per month, in comparison with its other manufactures of, for example, 70 to 90,000 tons annually of sulphuric acid, 20 to 30,000 tons annually of chlorine, 20 to 34,000 tons annually of caustic soda solution, more than 200,000 tons annually of nitrogen fertilizers, etc. a really ridiculously small amount which was naturally of no importance at all.

It may well be that of this tremendous production, especially of acids and intermediate products, a very small part, of course, was also used in the manufacture of explosives. For it is an inherent characteristic of the chemical industry that the same intermediate products can be used both for the production of dyes and other peacetime products as well as for the manufacture of war products. (Lina, German transcript page 1394 ff, English transcript page 1418 ff.). In Hoechst, however, shipments of acids, salts and intermediate products did not go directly to the Wehrmacht but always to other factories, so that it could not be determined whether and which of these preliminary and intermediate products, forwarded through some invisible channel or other, would finally be used in the manufacture of products intended for the Wehrmacht. At the beginning of the war the production was undoubtedly almost exclusively intended for civilian needs and especially for export. (Struss affidavit, Exh.391, HI-9487, Book 15, German page 126, English page 109).

Under these circumstances the statement of the defendant Lautenschlaeger in his affidavit (Exh. 1358, HI-6415, Book 69, German page 150, English page 119) that about 40% of the production of the Hoechst plant was for "armament production" is undoubtedly incorrect. (Jaehne, German transcript page 10069, 10105, English transcript page 9933, 9969/70). Of course, this

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expression "armament production" used by Lautenschlaeger is completely vague and ambiguous. In the last analysis, in present day total warfare everything serves to strengthen the war potential, even the farmers' work of producing food and this in particular, and could be unhesitatingly described as analogous to armament production. Under this point of view if one ^{includes} preliminary products, intermediate products and dyestuffs ~~into~~ ^{the} armament production, then, of course, this statement of Lautenschlaeger's might be understandable. In any case Hoechst was not classified as an armament plant but as a K and L factory. (Jaehne, German transcript page 10051, English transcript page 9916, Hirschel German transcript page 10159, English transcript page 10022).

In connection with Hoechst and the Maingau factories several special products have been mentioned in the documents of the Prosecution on which I should like to comment briefly.

1.) The products tutogen, GM 1 and acetophenon mentioned in Exh. 631 (NI-6500, Book 35, German page 158, English page 81), Exh. 272, (NI-6633, Book 36, German page 30, English page 29) and Exh. 124 (NI-5890, Book 5, German page 176, English page 146) have nothing to do with explosives or war gases. Tutogen is a fire extinguishing solution. (Greune affidavit, Jaehne doc. 10, Exh. 13, Book 1, page 25). GM 1 is the laughing-gas which is used in gasoline engines to increase performance. (Bachran affidavit, Jaehne Doc. 9, Exh. 15, Book 1, page 22, Jaehne German transcript page 10055, English transcript page 9919/20).

Acetophenon is an old chemical, which, however, was not produced in Hoechst on a large scale. (Greune affidavit, Jaehne Doc. 10, Exh. 13, Book 1, page 25).

2.) In Griesheim, which remained loyal to its peacetime production during the war (Sagelbertz affidavit, Jaehne Doc. 13, Exh. 16, Book 1, page 37) dinitrobenzol was produced both in peacetime and in war time, and likewise in Hoechst itself in small quantities.

Dinitrobenzol is a substance which had been produced for many decades as an intermediate product for dyestuffs. During the war it was in part poured into shells to fill up the empty space because there were not enough explosives. Dinitrobenzol itself, however, is not an explosive. It is not considered an explosive either according to the railroad regulation in railroad transportation or according to the accident prevention regulations with respect to safety measures in manufacturing, so that no protective measures at all had to be adopted either in the manufacture or in the transport of dinitrobenzol.

(Engelbertz affidavit, Jaehne Doc. 12, Exh. 16, Book 1, page 35, Jaehne German transcript page 10055, English transcript page 9920).

3.) Finally, Hoechst is mentioned in connection with glycerogen and hexogen.

Glycerogen was invented in Hoechst as early as 1930. Its technical manufacture was developed after 1935. Glycerogen was used as a substitute for glycerine in the manufacture of printing pastes for printing textiles. (Greune affidavit, Jaehne Doc. 10, Exh. 13, Book 1, page 25.)

Hexogen has already been known since 1898 as a high-explosive demolition block. In the course of the general research work a chemist in Hoechst invented a new manufacturing process in 1935. The process was then taken over by the Dyn.A.G., and brought to technical perfection. However, it was also soon abandoned there in favor of a new process. (Greune affidavit, Jaehne Doc. 10, Exh. 13, Book 1, page 26, Jaehne German transcript page 10052, English transcript page 9917).

It is an interesting fact that hexogen was already being manufactured in Italy in 1931, later also in Switzerland, France and Czechoslovakia. (Grottanelli affidavit, Jaehne Doc. 11, Exh. 14, Book 1, page 29 ff.).

Hexogen was never manufactured on a large scale in Hoechst. On the contrary, the work at Hoechst was limited to the researches in 1935 which were not even conducted at the instigation of the plant management at that time. Lautenschlaeger and Jahne, who, indeed, did not take over the plant management until 1938, had no influence at all either in the beginning or during the course of this work. (Greune affidavit, Jahne Doc. 10, Exh. 13, Book 1, page 26.).

4.) FS solution has been manufactured in Hoechst since 1917/18. Accordingly, even in peacetime after 1919 Hoechst made regular deliveries to the small Reichswehr and the tiny German navy within the limitations of the Versailles Treaty. There was a war delivery contract concerning what was in comparison with the rest of the production the extremely small amount of 375 tons per month (Exh. 210, NI-8879, Book 8, German page 51, English page 49), which was not increased until 1942 when FS solution was used to an increased extent for smoke screens, that is, for the protection of cities and factories during air raids. (Jahne German transcript page 10054, English transcript page 9919, Bachran affidavit, Jahne Doc. 9, Exh. 15, Book 1, page 29).

VI. Knowledge of aggressive intentions.

If the Prosecution accuses the defendant Jahne of participating in the preparation of a war of aggression, then it must first not only prove that the defendant Jahne assisted in an objective way in creating the material foundations for a war of aggression contrary to law. I believe that my preceding arguments have shown that there can be no talk of that in Jahne's case. Secondly, however, it would also be necessary to produce proof that Jahne was aware that Hitler was planning a war of aggression. The Prosecution has not even undertaken to advance this proof, let alone actually produced it.

a) Jachne was not better informed of Hitler's military intentions as any other German. (Jachne transcript Page 10045 German, Page 9911 English) Hitler's re-armament gave no cause for assuming aggressive intentions. Official quarters time and again advanced the same argument that is advanced even today for the armament of all countries, namely with the motto: "Si vis pacem, para bellum" or with Washington's statement: "If we decide to secure peace, it must be known, that we are at all times ready for war." (Jachne transcript page 10269 German, Page 10130 English). This reasoning appeared only too well founded in view of the encirclement of Germany and her complete disarmament in midst of heavily armed enemy nations.

b) Whatever Jachne due to his position within the I.G. saw, pointed against the possibility of any war, not to mention an aggressive war. Permission was granted in the summer of 1939 for the construction of a new color-film factory on the Polish border. Important research results were at the same time transmitted to the concerns Dupont and Standard Oil. The I.G. became a partner in an English factory producing paguodiam. (Krieger transcript page 6563, German, Page 6514 English). The I.G. built a dye factory in England from 1938 to 1939 (Affidavit Schuch, Doc. for Meer 68, Exh. 230, Doc. Book for Meer 3, Page 45). Lubrication was to be shut down entirely during war. All of this did not indicate aggressive war. (Affidavit Dr. Mahner, Doc. Wurster, 140, Exh. 49, Doc. Book Wurster 2, Page 5, Struss transcript Page 1853 German, Page 1868 English). And in regard to the stock piling of chemical raw materials and intermediate products the report of the US Strategic Combin. Survey (Doc. 616 NI 10580, Doc. Book 34, German Pages 230 and on English Pages 126 and on definitely shows, that Germany in the stock piling of its chemicals was not prepared for a war. (Affidavit Dr. Schindler, Doc. Krouch 73, Exh. 20, Doc. Book Krouch 1 3 884 Ahmann transcript page 3163 German, Page 3142 English).

c) From the standpoint of the defendants Lautenschlaeger and Jaehn, nothing pointed to the fact that a war was ⁱⁿ imminent. To the two American chemists who inspected Hoechst in the latter part of August 1939 therefore everything was shown in the Hoechst Plant and nothing kept secret, while in other, especially in French, factories because of the obligation for secrecy towards the army, inspection of important establishments had been refused. Both of these chemists were told at Hoechst, that war was not expected. (Doc. for Meer 69, Exh. 231, Book for Meer 3, Page 50; for Meer transcript page 7174 German, Page 7121 English).

2 Directors of the English firm Boots, Pure Drug Co. Nottingham, came to Hoechst in July 1939, they had travelled to Germany only with the greatest misgivings on account of the war hysteria in England. Due to reports in the English press they had been under the impression that war was imminent, and they were quite surprised that one had only smiles for their fears in Hoechst, as one considered war as impossible there. (Affidavit Dr. Kotthoff, Doc. Lautenschlaeger, 23, Exh. 38, Book Lautenschlaeger 1, Page 53).

d) These documents prove, that the plant management at Hoechst did not think of war at all, for otherwise they would not have had their plants shown to the American and English engineers so open heartedly. Besides the true attitude of the plant management at Hoechst is most conclusively shown by the statement made by the witness Poehn, who describes two separate occurrences taking place shortly before the outbreak of war. When Poehn at that time advised to buy food as a safety measure, Jaehn replied, that he would not request credit for this purpose, for no sane man being would think of war. (Poehn transcript page 10187 German, page 10048 English). On the occasion of discussions for demands made for air raid protection, Jaehn ~~replied~~ at the same time, that one had been having enough bother with the authorities, ^{but} surely no one would be insane enough to let it come to a war. (Poehn transcript page 10188 German, Page 10049 English).

According to all that, the plant management saw and heard, it had to come to this conclusion. But this method of thought corresponded also entirely to the line of thinking of the scientist Lautenschlaeger, who had been raised in the world of science and was accustomed to strictly logical thinking, and of the sober technician Jachne, to both of whom nothing was more alien than the sphere of a vehement visionary like Hitler. (Jachne transcript page 10046, German, Page 9911/2 English).

c) Characteristic for their attitude is their action during the war. As a sober technician Jachne had immediately figured out that the war would be lost in view of the production capacities and he made no secret of this conviction of his. (Jachne transcript page 10046, German, Page 9911/2 English. Affidavit Helfrich, Doc. Jachne 1, Exh. 1, Book 1, Page 2; Affidavit Gohardt, Doc. Jachne 45, Exh. 3, Book 3, Page 9; Affidavit Drispols, Doc. Jachne 4, Exh. 7, Book 1, Page 10). When towards the end of the war, by order of Hitler, a so-called paralysing action was ordered, by which the re-activation of factories was to be made impossible for the enemy, Jachne openly ordered in a conference with his engineers that as little as possible should be done about it. (Special Affidavit, Doc. Jachne 7, Exh. 10, Book 1, Page 18 cont.). When the American Army advanced Jachne manfully maintained the point of view towards the Gauloiter that a defense of Frankfurt would be senseless. Both of these events occurred at a time at which remarks of that kind, showing a lack of the will to resist, were extremely dangerous and were usually punished by hanging. (Affidavit Hurno, Doc. Jachne 8, Exh. 11, Doc. Book 1, Page 21).

Count II of the Indictment: Spoliation and Plundering.

Under Count II of the Indictment the defendants are accused of Spoliation and Plundering. To this second Count of the Indictment I shall, just in order to prevent unnecessary repetitions, state my point of view only in so far as the defendant Jacone or the Maingauwerke are mentioned especially therein.

I. Wola Boiler

One of the Maingau plants is mentioned in connection with a boiler from Poland. This boiler arrived in Offenbach from Wola only in 1944, was paid for at its original value, remained in its crate, and went back to Poland unused after the occupation. (Schwab transcript Page 6131, 6152/4 Page 6074, 6210/2 English; Affidavit Hagenboecker, Doc. Jacone 48, Exh. 19, Book 3, Page 19/20; Affidavit Dr. Max Winkler, Doc. Schnitzler, 134, Exh. 137, Book Schnitzler 7, Page 102 German). The purchase was made by the manager of the plant Offenbach Dr. Hagenboecker, absolutely independently (Affidavit Hagenboecker, Doc. Jacone 48, Exh. 19, Book 3, Page 19).

Neither Jacone nor Leutenschlaeger ever knew anything of the purchase of this small boiler of 1 ckm capacity, and valued at about RM 3.000, by one of the plants of the Maingau group. (Jacone transcript Page 10058/9 German, Page 9923 Engl., Affidavit Hagenboecker Doc. Jacone 48, Exh. 19 Book 3, Page 19 For Hagenboecker was independent manager of the plant at Offenbach. There was no reason to inform Leutenschlaeger or Jacone about this. This concerned, compared to the turnover by the Maingau Werke amounting to millions, an infinitesimal and very insignificant object. (Jacone transcript Page 10058/9 German, Page 9923 English; Affidavit Hagenboecker, Doc. Jacone 48, Exh. 19, Book 3, Page 19).

II. Oxygen Plants Alsace-Lorraine and Luxembourg.

The Defendant Jachno has furthermore been mentioned in connection with the Oxygen Plants in Alsace-Lorraine and Luxembourg.

a) Many bridges and traffic establishments had been destroyed in Alsace-Lorraine due to the events of war. These establishments had to be repaired again in the quickest way possible, in order to put the economy back into operation again and reestablish peace and order. Large amounts of oxygen for the welding and cutting tools were therefore needed. This is very difficult to transport, for transportation has to be accomplished in the well known heavy steel bottles. A sufficient supply of the Alsace-Lorraine economy with oxygen from Germany was impossible due to the bad traffic conditions. One was therefore forced in the interest of the Alsace-Lorraine economy to re-activate the Alsace-Lorraine oxygen and acetylene plants. (Jachno transcript page 10061 German, Page 9925/6 English; Affidavit Holler, Doc. Jachno 46, Exh. 30, Book 3, Page 13; Affidavit Bucherer, Doc. Jachno 47, Exh. 21, Book 3, Page 17).

As the owners had left, the German occupying authorities got in touch with the German oxygen sales company in July 1940, namely the United Oxygen Plants (Vereinigte Sauerstoff werke VSW) which was owned to 50% each by the I.G. and the Gesellschaft Linde, and requested them to put the plants back into operation. (Affidavit Bucherer, Doc. Jachno 47, Exh. 21, Book 3, Page 15; Jachno transcript page 10061 German, Page 9925/6 English). This was not so simple, because most of the bottle stock was not available anymore. The plants at Strassburg-Schiltigheim had been completely evacuated by their French owners. All machinery had been removed

and taken to the interior of France. (Affidavit Holler, Doc. Jachno 46, Exh. 20, Book 3, Page 14; Affidavit Wacherer, Doc. Jachno 47, Exh. 21, Book 3, page 16).

In the empty factory space at Strassbourg-Schiltisheim the I.G. now set up two large and modern Oxygen generators, built according to modern points of view, with a total capacity of 200 cbs per hour, and converted thereby the ^{empty} space into a factory again. The plants out of operation at Metz-Diedenhofen were likewise put back into operation, and modernised with new machinery supplied by the I.G.. Oxygen and Acetylene bottles from the stocks of the I.G. were also furnished the plants. Thus, the I.G. invested quite considerable amounts in the plants. (Affidavit Holler, Doc. Jachno 46, Exh. 20, Book 3, Page 13; Affidavit Wacherer, Doc. Jachno 47, Exh. 21, Book 3, Page 16).

The entire production of the Alsace-Lorraine oxygen plants was merely intended for the re-activation of the Alsace - Lorraine economy, and also remained there without exception. (Affidavit Wacherer, Doc. Jachno 47, Exh. 21, Book 3, Page 17; Affidavit Holler, Doc. Jachno 46, Exh. 20, Book 3, Page 13; Jachno transcript page 10062 German, Page 9926 English).

When the German ^{army} retired, these plants ^{were} left behind undestroyed in Alsace-Lorraine, together with the machinery and bottle stocks belonging to the I.G.. For the owners of the plants the situation was so, that the value of their plants had not decreased ^{at} due to the I.G. activity, but was considerably increased (Holler Affidavit, Doc. Jachno 46, Exh. 20, Book 3, Page 13; Jachno transcript Page 10062 German, Page 9926 English).

b) Jaehne is mentioned in the documents of the Prosecution which refer to this complex only in so far as several circulars, referring to the Metz-Diedenhofen plant, were sent to Jaehne for information just as they were distributed to others. Jaehne, according to the organizational setup in the I.G., had nothing to do with the negotiations for acquisitions and leases. The department "Sales of Chemicals", headed by the Vorstand member Weber-Andrease, was responsible for this commercial part of the oxygen field. Responsible for the technical part of the oxygen field, however, was Professor Holler under the direction of Jaehne. (Jaehne, German records, pages 10060,/61, English records pages 9924/26, Mayer-Megelin, German records, page 3107, English records, page 3087).

Jaehne's activity was confined to having a plan drafted for the practical operation and equipment of the plants, to the assignment of the necessary engineers and to making the essential machines available for the plants from the stocks of the I.G.. Jaehne, on the other hand, had nothing to do with the negotiations of the contracts or even with the conclusion of these contracts, as it is shown in the documents submitted in volumes 61 and 62. These negotiations rather were conducted by the VSI (Vereinigte Sauerstoffwerke) and were prepared in the I.G. by Director Ludwigs under the direction of Weber-Andrease, as it is shown in the documents of the Prosecution. (Exh. 1223 NI 8158, volume 61, German page 59, English page 39, Jaehne, German records, pages 10060, 10062, English records, pages 9924/26).

Neither is this refuted in a file note of the VSI, concerning a discussion between the I.G., the Gesellschaft Linde and the VSI, which was submitted by the Prosecution during Jaehne's cross-examination. (Exh. 2062 NI 14738). It is stated in this note that the "negotiations concerning the Alsacian plants" did not show any progress and Jaehne, therefore, had called on the Baden government on 19 August 1940 where he succeeded "in reaching an agreement in accordance with our wishes".

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This note is dated August 1940. This was long before the time when the question was acute in regard to the legal form to be applied for the operation of the plants. (Ltrh. 1223 NI 8158, volume 61, German page 59, English page 39).

The only point of discussion in the conference Jaehne had with the Baden government shortly after the armistice rather was the question as to what dispositions Jaehne was to take as a technician. He was told that the Wehrmacht wanted the I.G. to operate the plants. He had been informed that the plants in Schiltigheim had been stripped and that therefore large investments were necessary. In order to make the appropriate arrangements he thus had to make certain what the occupation authorities actually wanted as the final decision was delayed in spite of the urgency. This was the purpose of his conference with the Baden government. (Jaehne German records, pages 10157/58, English records pages 10019/20). Apart from that, an agreement was reached on the leases at a much later date namely during the following year. (Ltrh. 1223 NI 8158, volume 61, German page 59, English page 39).

It is true that Jaehne, as the technical expert on oxygen, was informed subsequently. He could not assume, however, that this was spoliation or robbery. (Jaehne German records, page 10062, English records 9926). He knew that, for the revival of the economy and consequently for the preservation of order and tranquillity, it was urgently necessary to get the oxygen plants into operation again. This required considerable investments which practically only the I.G. was in a position to raise. The machines, bottles and the entire production remained in the country. Nothing was taken out. An adequate amount was paid for rent. It therefore is beyond any doubt that a spoliation according to Article 47 of the Hague Regulations for land warfare is non-existent.

For these measures were necessary in order to restore and maintain public order and public safety and they conformed to Article 43 of the Hague regulations for land warfare which has the following wording:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country".

Jaehne had to leave it to the commercial and legal experts to decide about the question as to what legal form was applied for the security of the investments necessary for the start of operations. Jaehne, being a layman in legal matters, could only review and evaluate the strictly technical and economic part of the matter which necessarily appeared to him to be completely free of objection. (Jaehne German records, page 10062, English records 9926).

c) Legal situation for the entire I.G. Konzern.

Such was the situation as Jaehne found it. Therewith I could close the discussion of the subject.

In view of the fact, however, that in the scope of the general organization of the themes I have accepted the mission to deal with this complex for the entire I.G. Konzern, I shall briefly express my opinion as to the legal situation for the entire I.G. Konzern.

The operation of the plants was necessary and was conducted in accordance with Article 43 of the Hague regulations for land warfare. However, if the I.G. was to operate the plants, it then was obvious that a legal form had to be chosen. This was necessary in order to arrive at a clear legal situation (Affidavit Bucherer, Doc. Jaehne 47, Exh. 21, volume 3, page 16) and to secure the investments with respect to the chief of the civil administration and German outsiders. (Lager - Egolin, German records, pages 3106, 3138, English records, pages 3086, 3116).

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The factory of L'air Liquide in Schiltigheim had been completely stripped. The newly installed machines, which only gave the empty factory halls the appearance of a factory, belonged to the I.G. The mere fact of strictly legal security for these machines through transfer of the property title in the land register constituted a strictly legal fiction for the time of the occupation. What happened afterwards was to be clarified only after the war through agreement with the owners to whom close friendly relations had existed for years and who had already agreed to a purchase so that there was no doubt that an agreement would be reached on this small object. (Mayer-Megelin, German records page 3138, English records 3116, Affidavit Bucherer, Doc. Jaehne 47, Exh. 21, volume 3, page 16).

If even the legal expert Mayer-Megelin had objections of strictly legal nature, it was only for the reason that the name of the seller was not entered in the land-register, and not because something was to be objected to morally, or from the point of international law. (Mayer-Megelin, German records, pages 3104/5, English records pages 3084/5). How much less objection could have the non-jurist Jaehne in such a case. The real estate was actually returned to the owners in an undamaged condition. An act of spoliation, which can obviously be carried out only on movable objects has not been committed. In this case, however, I think that the economic aspect is of decisive importance. For the conception of spoliation in the meaning of the Hague regulations for land warfare, in my opinion, necessitates, according to its meaning and purpose, that the country was deprived of specific values during the occupation and that these values have been removed from the country. This has not taken place in the case of the oxygen plants in Alsace-Lorraine. On the contrary, values have been imported into Elsass Lorraine to a great extent and have remained there together with the production.

Just for the purpose of eliminating any mistakes I should like to state that the plant mentioned in Exhibits 1217 and 1218 (NI 8483 and 8382, volume 61, German pages 15 and 30, English page 23) of the "Societe des Produits Chimiques et Matieres Colorantes de Mulhouse" was not an oxygen plant and therefore has nothing to do with the complex of oxygen plants dealt with in this Trial Brief.

III. In closing the discussion of Count II of the Indictment I should like to point to another possibility for mistake. If it is stated in the transcript covering the meeting of the Commercial Committee on 8 July 1941 (Exh. 370 NI 6086, volume 14,

German page 46, English page 31) that a technical committee had inspected the "So. Clair du Rhone" plant in France, this had nothing to do with the Toko (technical committee) which was headed by Jaehne. In question here, to be true, was a special committee of chemists which at that time was sent to Francolor. Jaehne was in no way involved therein. (Jaehne German records, page 10063, English records, page 9927).

Count III of the Indictment: Enslavement and Mass Murder.

Under Count III of the Indictment the defendant is charged with the employment of foreign workers in the I.G. This complex too, has already been dealt with in detail as to its legal aspects and to the factual questions concerning the entire I.G. Permit me therefore, in order to avoid unpleasant repetitions, to confine my explanations to the charges concerning the defendant Jaehne and the Hoechst plant in particular.

I. Participation in the Technical Committee (Toko).

The defendant Jaehne has been accused, in his capacity as chairman of the Technical Committee, of having supported the foreign labor program by giving his approval for the construction of barracks.

a) It is true that the Engineering Committee participated in the credit applications for the construction of huts. However, the applications were checked by it only after the necessity of the huts' constructions had been established by the works concerned, and had been certified by the Social Committee. (Affidavit Eckardt Doc. Jachne 14 Exh. 22 Book 1 p. 40). The Engineering Committee's only task was then to examine from an engineering view point whether the construction answered the purpose, whether sufficient auxiliary installations had been provided for, as dining halls, kitchens, sanitary installations, etc., and whether the prices were reasonable. Since they were huts of a standard type, of the kind used in the Reich Labor Service, with approximately fixed prices, the checking was essentially restricted to observing whether sufficient auxiliary installations had been provided for. (Jachne German Transcript P. 10 063/64, Engl. Tr. P. 9927/8).

To judge by everything which had been presented in this trial, the huts were generously and purposefully constructed, and in sufficient numbers. In my opinion, the Defendant Jachne can, therefore, not be blamed for recommending their construction. On the contrary, he might have justly been blamed had he refused the consent of the Engineering Committee to build a sufficient number of huts. For then, the foreign workers would have had to be housed in the already available billets, which were far more primitive and crowded. (Jachne G.T.P. 10064, E.T.P. 9928). The approval of the huts could only be to the benefit of the foreign workers.

It was practically impossible to preclude antecedent allocation of foreign labor by absolutely refusing to examine the credit applications for the constructions of the huts.

The only consequence would have been that Jahne would have landed in the concentration camp on account of sabotage, unless something worse would have happened to him. For by official directives the IG was forced to employ the foreign workers necessary for fulfilling the production quota allotted to it. A refusal would have been sabotage and treason, and been punished accordingly. (Milch G.T.P. 5366, E.T.P. 5337, Stothfang G.T.P. 3762 E.T.P. 3739, Krauch G.T.P. 5227 E.T.P. 5198/9, Schieber G.T.P. 5296 E.P.S. 5270, ter Meer G.T.P. 7184 E.T.P. 7129, Flick G.T.P. 9143, 9145 /⁹¹⁴⁰ 9142 E.T.P. 9047/8, 9049, 9044, 9046/7, Struss G.T.P. 4093 E.T.P. 4067/8, Jahne G.T.P. 10064 E.T.P. 9928, Affidavit Engelberts Doc. Jahne 13 Exh. 23 F. 36f.) I may be excused from further enlarging on this point after the comprehensive expositions given by my colleague Dix.

The question of workers was discussed in the Engineering Committee. Since 1942, the witness Struss often displayed, among 10 - 15 other tabulations, a table showing the state of the labor question. (Struss G.T.P. 4093, E.T.P. 4067/88). Yet, it was never explained that the foreign workers were persons who had been forcibly brought to Germany. (Struss G.T.P. 4096, E.T.P. 4070).

- b) The Prosecution has submitted the record of the Technical Committee meeting of 14 December 1943 (Exh. 1319 NI 4693 Bk. 68 G.P. 41, E.P. 41), in which under point 12 f a report of Graduate Engineer Riess is quoted. There, Riess gives an account of the experiences made with the craftsmen's training schools, which individual Sparten of the IG had established in France, Belgium, and Denmark. On this occasion Riess complained that in the case of the Worker's School West in Brussels "it had practically not been possible so far to send the newly trained workers to Germany, as they were running away before, in contrast to the schools of the Main Group III." The Prosecution concludes from this that the pupils of these craftsmen's schools had been forced workers. However, this conclusion is faulty.

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The true facts are as follows: During the war, a considerable shortage of trained workers made itself felt at individual plants of the I.G., particularly in Sparte III. From the Office Sauckel foreign trained workers had also been assigned, who partly were insufficiently trained, partly worked only reluctantly in Germany. (Affidavit Riess Doc. Jachne 52 Exh. 23 Bk. 3 P. 33). For this reason, Sparte III had established schools abroad in which foreigners were trained to become craftsmen, especially machinists and welders. Other plants had joined Sparte III in this action. (Jachne G.T.P. 10065 and 10067, E.T.P. 9929 and 9931; Affidavit Riess Doc. Jachne 52 Exh. 23 Bk. 3 P. 33). The costs of installing the schools as well as those of the entire training were borne by the I.G. (Affidavit Riess Doc. Jachne 52 Exh. 23 Bk. 3 P. 33). The pupils had nothing to pay during the course, on the contrary, they were paid wages. But they incurred the obligation to accept employment in a certain plant of the IG in Germany after the termination of the training, in case they passed the test. (Affidavit Riess Doc. Jachne 52 Exh. 23 Bk. 3 P. 34).

The recruiting of the workers took place on a completely voluntary basis. (Affidavit Riess Doc. Jachne 52 Exh. 23 Bk. 3 P. 34). It was the very reason of locating the schools abroad to get only voluntary workers, and to be able to make a selection right on the spot. (Affidavit Einsler Doc. Jachne 53 Exh. 24 Bk. 3 P. 37).

The schools were practically overrun, so that a good selection was possible. Thus, in Copenhagen, of 502 applicants only 32 could be selected for the schools. (Affidavit Einsler Doc. Jachne 53 Exh. 24 Bk. 3 P. 37). That proves best how favorable the conditions of the IG were for the pupils. But also among those admitted into the school a further selection was made. Thus, in one case, of 212 students only 108 men - 51% were employed in Germany. (Affidavit Einsler Doc. Jachne 53 Exh. 24 Bk. 3 P. 38), and in another case, in the welder's school in

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Antwerp, of 56 men only 35 = 61 %. (Affidavit Binsler Doc. Jachne 53 Exh. 24 Bk. 3 P. 39). The schools employed incidentally side by side with German also foreign foremen: the latter continued to look after the students sent to Germany after the termination of their training, called on them in Germany and took care of their interests. (Affidavit Riess Doc. Jachne 52 Exh. 23 Bk. 3 P. 34).

Any coercion, therefore, is absolutely out of the question, this is particularly and unequivocally shown by the contemporary illustrated account of the IG of these schools. (Affidavit Binsler Doc. Jachne 53 Exh. 24 Bk. 3 P. 37 ff.) It is true, there was a great temptation for the students to evade their contractual obligations, and simply to fail to go to Germany after the training. For they were surely able to use the knowledge thus acquired free of charge also at some other place, and they knew they had nothing to fear from the IG, since the latter had no use for such unwilling characters. (Affidavit Riess Doc. Jachne 52 Exh. 23 Bk. 3 P. 34/5, Jachne G.T.P. 10124/9987, E.T.P. 9987). The paragraph in the transcript mentioned by the Prosecution refers to such cases of breach of contract.

Jachne, himself, due to his general attitude towards the question of foreign labor, was opposed to this training of workers abroad. (Affidavit Riess Doc. Jachne 52 Exh. 23 Bk. 3 P. 33, Jachne G.T.P. 10067, E.T.P. 9931). It was also a costly affair, thus the current operating expenses of the welding school in Antwerp for 19 students were RM 8 300.-- alone for material expenses. (Affidavit Binsler Doc. Jachne 53 Exh. 24 Bk. 3 P. 39). For such reasons, the Hoechst works did not participate in this training program. (Jachne G.T.P. 10067, E.T.P. 9931).

II. Works Management Hoechst and the Foreign Workers.
 a) In general.

During the war foreigners were employed in the Hoechst works, just as in all other large works in Germany.

- 1.) The Betriebsfuehrer (Managing Director) of the Hoechst works, and therefore by the law for Regulating National Labor the responsible person, was Professor Lautenschlaeger. The question, in how far Jachne, as his deputy, was responsible for the employment of foreigners at Hoechst, is of little importance. For Jachne, himself, when testifying on the witness stand declared that he was readily and with a clear conscience prepared to assume the responsibility, as in the Hoechst works unlawful employment and treatment of foreign workers had not occurred. (Jachne, G.T.P. 10069, E.T.P. 9933). Thus, I would like to deal at this place with the question of the employment and treatment of foreign laborers as a whole for the Works Management of Hoechst.
- 2.) It has already been discussed in detail that the plants of the IG employed foreign workers only under compulsion. Hoechst was in this respect no exception. However, Hoechst was allotted a certain production quota, without being assigned any German workers. Hoechst was therefore forced to employ the foreign workers. This was absolutely compulsory. A refusal would have constituted a clear case of sabotage, and would have been punished accordingly. (Hirschel G.T.P. 10160, E.T.P. 10022; Affidavit Engelbert: Doc. Jachne 13 Exh. 26 Bk. 1 P. 36; Affidavit Kiesskalt Doc. Jachne 6 Exh. 9 Bk. 1 P. 72).

Hoechst was by no means glad to take the foreign workers. For the employment of foreigners in the complicated working procedures of the chemical industry involved considerable difficulties from the point of view of language alone. In addition there was a considerable danger of sabotage, which, to be sure, never actually became a fact in Hoechst because of the good treatment of the foreign workers. Finally, the foreign workers also caused considerable additional expense for food, lodging and other attentions. Thus, Hoechst paid out RM. 2877.10 for each individual foreigner in addition to his salary. (Dr. Fensel's affidavit, Jaehne Doc. 49, Exh. 27, Book 3, page 22/3, Klesskalt affidavit, Jaehne Doc. 6, Exh. 9, Book 1, page 72, Hagenbocker affidavit, Lautenschlaeger Doc. 14, Exh. 29, Lautenschlaeger Book 1, page 35, Engelberts affidavit, Jaehne Doc. 13, Exh. 25, Book 1, page 36, Jaehne German transcript page 10070, English transcript page 9934, Hirschel German/transcript page 10160, English transcript page 10023).

Nevertheless, in a situation in which the employment of foreign workers was definitely compulsory and one did not know how to cope with the required production in view of the removal of German workers every capable foreign worker represented a great relief for the entire plant, but more especially for the workers already employed there, including foreign workers. (Jaehne German transcript page 10070, English transcript page 9934, Hirschel German transcript page 10160, English transcript page 10022/3, Gebhardt affidavit, Jaehne Doc. 54, Exh. 25, Book 3, page 42).

Hoechst constantly endeavored to keep German workers and applied for them at the labor offices. (Hirschel German transcript page 10161, English transcript page 10024). However, the authorities simply refused this, for example, is shown by the letter of the Frankfurt-on-Main Regional Armament Office of 1942 which I have submitted, pointing out that German workers had to be reserved for the plants engaged in important production for the Wehrmacht. (Jaehne Doc. 25, Exh. 38, Book 2, page 1, Jaehne Doc. 26

Exh. 29, Book 2, page 3). Hoechst, however, did not belong among these plants and this was the chief reason for its great difficulties in the labor question. (Hirschel German transcript page 10160, 10175, English transcript page 10022, 10037).

- 3.) The number of workers in Hoechst remained about the same in peacetime and in war. There were about 12,000. (Jahne German transcript page 10072, English transcript page 9935). The number of foreign workers remained, as shown by the diagram (Doc. NI-3762 A Exh. 1659, Book 88, German page 15, English page 15) comparatively small, with only 22.1 or 23.9 %, since the plant had employed German women more intensively. There were about 2400 foreign workers on the average, about 3 000 at the maximum. There were never any concentration camp prisoners in Hoechst nor in the other Maingau plants. (Jahne German transcript page 10072, English transcript page 9935, Hirschel German transcript page 10162, English transcript page 10025, Struss German transcript page 4101, English transcript page 4074). To that extent the diagrams are erroneous, as they include concentration camp prisoners with other groups under the heading "loaned workers, foreign loaned workers, disciplinary prisoners from the Wehrmacht, and prisoners from concentration camps". (Simon affidavit, Jahne Doc. 15, Exh. 32, Book 1, page 43).

The other Maingau plants also had foreign workers in part. Since, as I have shown on page 12, they had independent plant managers and the latter were therefore solely responsible for their workers, I do not intend to discuss them in any greater detail, but will only point out that the employment and treatment of foreign workers was unobjectionable there too. (Giessler affidavit, Lautenschlaeger, Doc. 13, Exh. 28, Lautenschlaeger Book 1, page 33, Engelberts affidavit, Jahne Doc. 24, Exh. 44, Book 1, page 78 f., Wiegand affidavit, Jahne Doc. 56, Exh. 16, Book 3, page 47, Hagenbocker affidavit, Lautenschlaeger Doc. 14, Exh. 29, Lautenschlaeger Book 1, page 35).

4.) The question whether the foreigners came to Germany of their own accord has already been discussed in detail by other persons. I might limit myself to explaining what Jachne knew about it at that time.

It was most emphatically stated by the responsible government offices, upon which Jachne primarily had to rely, that the recruiting in foreign countries was carried out on the basis of voluntary applications, as is shown by, among other things, the official announcement in bulletin of the Reich Labor Ministry which I have submitted. (Jachne Doc. 27, Exh. 50, Book 2, page 8). It was also in accordance with this if Jachne heard that 10% of the Belgian workers, for example, had their wives come after them (see affidavit, Jachne Doc. 57, Exh. 54, Book 3, page 68) and if many of the foreign workers coming from the East made the remark that they should also like to remain in Germany after the war. He heard that men who went on leave returned to Bochum again almost without exception and that a relationship of actual confidence soon developed between the Russians and their German fellow workers. (Hirschel German transcript page 10172, English transcript page 10035, Humann affidavit, Jachne Doc. 8, Exh. 11, Book 1, page 75). Furthermore, he heard that 50 % of the plant fire-fighting force consisted of Dutchmen who had voluntarily applied for these positions, and that in spite of this no cases of sabotage had occurred but on the contrary these men worked just as hard as the Germans. (Pachn German transcript page 10197, English transcript page 10058). All that indicated very definitely that the work was voluntary. If contrary to these facts a few workers claimed that they had come involuntarily, then one naturally could not know whether that was at all true and whether these people were merely trying to arouse sympathy. (Jachne German transcript page 10127, English transcript page 9991). Jachne naturally might think that some workers had only come under the pressure of the times and the conditions in the occupied territory.

However, this did not definitely indicate coercion on the part of the German authorities.

Moreover, as a matter of fact nearly all the workers from the West, that is, France, Belgium, Holland and Denmark, came to Hoechst on the basis of so-called loan contracts by foreign assembly firms. (Ems affidavit, Jaehne Doc. 57, Exh. 55, Book 3, page 50, Simon affidavit, Jaehne Doc. 15, Exh. 32, Book 1, page 42). The form of these contracts, of which I have attached a sample, shows that they were concluded on a voluntary basis. (Jaehne Doc. 28, Exh. 31, Book 2, page 7ff.). Nor was any kind of pressure exerted on the loan firms themselves. (Ems affidavit Jaehne Doc. 57, Exh. 55, Book 3, page 50). For the most part the foreign assembly firms sent their old personnel of many years standing to Germany, some of them, naturally, also being newly hired men. However, one never had the impression in Hoechst that they were people who had been sent there by force or collected anywhere. (Ems affidavit, Jaehne Doc. 57, Exh. 55, Book 3, page 50). The foreign firms had their own clerks in Hoechst who handled the accounts for them. The representatives of the firms were in Hoechst regularly and looked after their men. (Ems affidavit Jaehne Doc. 57, Exh. 55, Book 3, page 50). Wages and welfare were the responsibility of the assembly firms then as before. (Simon affidavit, Jaehne Doc. 15, Exh. 32, Book 1, page 42).

Hoechst did not maintain any recruiting offices of its own abroad. To be sure, it occasionally sent so-called "liaison men" abroad for a short time who were supposed to explain the working conditions to the workers and prevent unsuitable workers from coming to the I.G. (Simon affidavit, Jaehne 15, Exh. 32, Book 1, page 44, Hirschel German transcript page 10182, English transcript page 10044, Gebhardt affidavit, Jaehne Doc. 54, Exh. 25, Book 3, page 41). Thus, Dr. Simon was in Italy for a time

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and was able to perceive that no coercion was employed in concluding contracts, not even against those who broke their contracts by failing to show up when the train left. (Simon affidavit, Jaehne Doc. 18, Exh. 32, Book 1, page 44/5, Hirschel German transcript page 10182, English transcript page 10044).

b) Working Conditions.

Once the Hoechst plant management definitely had to take the foreign workers it did everything for them that was at all possible.

- 1.) The Plant Manager of Hoechst, Professor Lautenschlaeger, expressed his point of view as follows in numerous conferences: "Men have been entrusted to us who are to work for the plant. If we expect them to perform satisfactory work then we must see to it that they feel free and work without coercion. We must treat them decently." These principles were carried out in the plant and it was seen to that they were observed. (Hirschel German transcript page 10163/4, English transcript page 10026).

The foreign workers worked together in the plant with the Germans and performed the same work under the same conditions. (Jaehne German transcript page 10079, English transcript page 9942, Hirschel German transcript page 10164, English transcript page 10026, Klesskalt affidavit, Jaehne Doc. 8, Exh. 9, Book 1, page 73, Humann affidavit, Jaehne Doc. 8, Exh. 11, Book 1, page 74).

- 2.) Before I pass over to the question of the foreign civilian workers proper I should like to mention the employment of prisoners of war. French prisoners of war were, in fact, also employed in the Hoechst plant if only in small numbers. (Hirschel German transcript page 10162, English transcript page 10025).

Especially these prisoners of war were quite particularly cared for by the Hoescht plant management. With regard to this Professor Lautenschlaeger had also issued a directive. It read as follows: "The prisoner of war is our most honorable co-worker. He had the misfortune of being vanquished on the battle-field. We must never make him feel this. We will treat him in the same way as we should like our fathers, brothers or sons to be treated if the misfortune of being taken prisoner should happen to them."

(Transcript Poesch P. 10094 German, P. 10055 English),

It is characteristic for the plant management's attitude towards prisoners of war, how spontaneously it expressed its pleasure and satisfaction when it learned that Poesch had protected a wounded American pilot against the fury of the people and had brought him to safety. Poesch's way of acting was at that time fully approved by the plant management and backed towards Party agencies, for when Goebbels's Lynch order was already in effect at that date. (Transcript Poesch P. 10194 - 1019 German, P. 10056/7 English). The plant manager, Professor Lautenschlaeger, interested himself quite particularly in the young French prisoners of war (Affidavit Dr. Baldus, Doc. "Lautenschlaeger 16, Exh. 31, Book Lautenschlaeger 1, P. 42).

The employment of these prisoners of war in the Hoescht plant was not contradictory to International Law.

The relevant provision is laid down in Article 31 of the Geneva Convention of 1929 which reads in its essential part as follows:

"The work to be performed by prisoners of war will not be directly connected with War actions. Above all it is prohibited to employ prisoners for the manufacture and the transport

of material which is destined for the combat troops."

By this provision of 1929 the former provision of Article 6 of the Hague Convention has been rescinded; it is only said there in the part which is of interest here:

"The work must have no connection to the war actions."

It emerges from this that by interpolation of the word "directly" in the Geneva Convention the extent of prohibited work was to be restricted, so that henceforth only such work is prohibited which is directly connected with war actions.

Neither prisoners of war nor foreign workers were employed for such work in Hoechst. In the first part of my Trial Brief I already set forth that Hoechst was a K and L plant, and its production for the Armed Forces was limited to an insignificant quantity of PS solution.

No prisoners of war were, however, employed in the PS solution plant.

(Transcript Hieschel P. 10163 German, P. 10025 English). Just as little were foreign workers, and much less prisoners of war, employed for the manufacture of the chemical primary and intermediate products which in

peacetime were used for the manufacture of dyestuffs and of other peacetime products, during the war, however, went to some obscure channels which ended in factories which produced for war purposes.

For the rest, such a manufacture of primary and intermediate products

is just as little a production which is "directly connected with

war actions" as is the making available of other basic materials which

are important for the war effort, as f.i. coal. Where, then

should be the limits which one wanted to define in Article 31 of the Geneva Convention by the interpolation of the word "directly"? Besides, the prisoners of war were almost exclusively employed in the shipping department for fertilizers. (Transcript Hirschel P. 10163 German, P. 10026 English). Moreover, the question whether the employment was in accordance with the Geneva Convention was continuously examined by officers of the Armed Forces, and one was of course obliged to rely on their opinions (Jahns Transcript P. 10058, German, P. 9923 English; Hirschel P. 10163 German, P. 10026 English). In June 1943 the prisoners of war were discharged from captivity in Hoechst and worked now as completely free workers in the Hoechst plant. (Dec. Jahns 38, Exh. 41, Book 2, P. 41; Transcript Hirschel P. 100162 and 10176 German, P. 10024 and 10038 English).

3. In this connection the Prosecution made reference to the telegram dated 5 February 1942 by which Lautenschlaeger required 1000 foreigners, evidently workers on loan, who had been offered by the General Plenipotentiary Chemistry. (Exh. 1362, NI 4880, Book 69, P. 176 German P. 141 English).

The witness Dr. Hirschel explained in detail that Hoechst could only expect to have these voluntary workers on loan allocated, if the products which were important for the war effort were emphasized. There should be no doubt that these workers on loan came at that time, the beginning of 1942, absolutely voluntarily. In practice these workers on loan were, however, not employed in the plants indicated when the application was made, but in normal plants where they relieved German workers who in turn were employed in the important plants. (Transcript Hirschel P. 10161/2 German, P. 10024 English).

4. Apart from Hoechst, prisoners of war were also employed with the Griseheim-Autogen plant belonging to the Mannesmann Werke Company. In 1943 they amounted to as many as 155, from 1944 on to 50 not at most,

most of them skilled workers, as f.i. lathe workers and welders who were almost exclusively employed at the instrument workshop. (Affidavit Engelbertz, Jahne Doc. 24, Exh. 44, Book 1, P. 77). Griesheim-Autogen was no chemical factory, but an engineering and instrument workshop, which manufactured all implements for welding technique and for the use of compressed gases. Only from 1939 until June 1940 had the plant been given one test order for tracer ammunition shells. But at that time prisoners of war were not yet employed with the plant. Other wise the plant did not manufacture direct war material, but it continued its peacetime production. (Affidavit Wiegand, Doc. Jahne 55, Exh. 17, Book 3, P. 44; Affidavit Engelbertz, Doc. Jahne 13, Exh. 25, Book 1, P. 38; Affidavit Prof. Heller, Doc. Jahne 50, Exh. 18, Book 3, P. 47; Transcript Jahne P. 10057 German, P. 9922 English). At the beginning the plant was a K and L plant, but in 1943 it was classified as armament factory, since the cutting and welding implements which were supplied by the factory were used in the metal industry and most of these were armament factories. (Affidavit Wiegand, Doc. Jahne 55, Exh. 17, Book 3, P. 44/45; Transcript Jahne P. 10056 German, P. 9922 English). At all events, the classification as armament factory would not have been justified, if the conceptions of 1939 had been taken as a basis. (Affidavit Wiegand, Doc. Jahne 55, Exh. 17, Book 3, P. 45.).

Of course a small part of the welding implements manufactured in Griesheim were supplied to workshops and maintenance pools of the Armed Forces, since welding implements were of course needed there just as were hammers, nails, screws and the like. (Affidavit Wiegand, Doc. Jahne 55, Exh. 17, Book 3, P. 45, Affidavit Heller, Doc. Jahne 56, Exh. 18, Book 3, P. 47). However, these deliveries represented only a small part of the total production. (Affidavit Heller, Doc. Jahne 56, Exh. 18, Book 3, Page 47; Affidavit Wiegand, Doc. Jahne, 55, Exh. 17, Book 3, Page 45).

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The employment of prisoners of war for the manufacture of these customary tools is, in my opinion, just as little prohibited as is f.i. the employment with a factory producing screws, which delivers part of its production to the Armed Forces. For this work was surely not "directly connected with war actions", as defined in Article 31 of the Geneva Convention. Besides, Jachno was no expert of International Law. He knew that the employment of these prisoners of war was continuously supervised by officers of the Armed Forces who had been properly trained, and he was obliged to rely on their opinion. (Transcript Jachno P. 10058 German, P. 9923 English; Affidavit Wiegand, Doc. Jachno 55, Exh. 17, Book 3, P. 45).

The Grisehein-Autogen plant was, it is true, under Jachno's superintendence. But this only meant that he was responsible to the Vorstand for the output and that he decided on changes of production and of the capacity. He did not bother, however, about the daily work. This was the plant manager's concern. (Transcript Jachno P. 10056 German, P. 9921 English). For the plant had an independent plant manager in the person of a Professor Heller, who, according to the "Law for Regulation of National Labor", was the Betriebsfuhrer who was responsible for personnel matters. (Transcript Jachno P. 10120 German, P. 9984 English).

5.) Russian prisoners of war were never employed at Hoochst. Only on some occasions legionaries of Russian nationality, who had fought on the German side against Russia, were for a time employed at the plant. These were consequently German soldiers. Most of them were amputees, they had, however, recovered and were employed according to their abilities. (Transcript Hirschel P. 10162/3 German, P. 10025 English; Affidavit Baldus, Doc. Jachno 59, Exh. 57, Book 3, P. 61; Affidavit Snessarew, Doc. Jachno 19, Exh. 38, Book 1, P. 58).

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- 6.) The working hours were the same for the foreign workers as for the Germans and ran between 53 and 56 hours a week. (Jachne German transcript page 10082, English transcript page 9945, Hirschel German transcript page 10164, English transcript page 10027, affidavit Ems document Jachne 57, exhibit 55, book 3 page 49). In this matter the plant management had a difficult position in regard to the labor agencies which were attempting to save thousands of workers by increasing the working hours. However, Professor Lautenschlaeger was always able to counter this successfully with the argument that in the chemical industry the danger of accidents would be too great if the working hours were increased, on account of fatigue. (Hirschel German transcript page 10164, Eng. transcript page 10027).
- 7.) Women had always been used in the workshops at Hoechst. The withdrawal of many German male workers made it more and more necessary towards the end of the war to use German women for those jobs as well that had formerly been performed by men. The tables presented by Struss show that in 1944 about 24 % of all workers were German women. (Doc. NI 3752 A exh. 1559, book 58 German page 15, English page 15). Naturally, besides the German women, foreign women were also used, and they comprised 7.5 % of the total.

On this subject the Prosecution has presented the minutes of a management meeting dealing with technical matters, held in Hoechst in 1943 (exh. 1561 NI 2829 book 69 German page 173/4, English page 136), where it is stated: ".....foreign women workers, who are still being employed for purely women's work must be transferred, since Eastern women workers, in particular, are used to men's work....."

But this was not a decision made by the management meeting. On the contrary, this part of the minutes is a quotation from a report made by Hirschel on the new government regulations.

This can be seen not only from the introductory sentence "Hirschel reports", but also from the use of the word "must". Jachne has expressly confirmed this during his questioning as a witness. (Jachne German transcript page 10080, English transcript page 9944).

In Hoechst there were a great many jobs which obviously were more suitable for women than for men. For example, the Russian women, doing piece work, earned more money filling boxes and cartons with dye stuffs than German men had earned before. It was a matter of easy jobs for which women were well suited, such as there are many in the chemical industry. It was for these jobs, and not for heavy men's work, that the Russian, as well as the German, women were used: . (Jachne German transcript page 10080/1, English transcript page 9944). Besides, the women and children were well cared for in Hoechst. Some Russian workers had brought their families with them to Hoechst. It was arranged that these families could live together. (Affidavit Sussarew doc. Jachne 57, exh. 55, book 3 pg. 50, affidavit Sussarew doc. Jachne 19, exh. 38, bk. 1, pg. 58). A well equipped kindergarten was fixed up for the small children; it was taken care of by a German kindergarten nurse and Eastern women. (Affidavit Sussarew doc. Jachne 19, exh. 38, bk. 1, pg. 58, affidavit Sussarew doc. Jachne 57, exh. 55, bk. 3, pg. 50, affidavit Baldus doc. Lautenschlaeger 16, exh. 31, bk. Lautenschlaeger 1, pg. 43, Jachne German transcript pg. 10083, Engl. transcript pg. 9946). A Russian school was established for the older children; it was run by a Russian teacher from Minak. (Affidavit Sussarew doc. Jachne 19, exh. 38, bk. 1, pg. 58, affidavit Sussarew doc. Jachne 57, exh. 55, bk. 3, pg. 49, affidavit Dr. Baldus doc. Lautenschlaeger 16, Exh. 31, bk. Lautenschlaeger 1, pg. 43, Jachne German transcript pg. 10083, English transcript pg. 9946).

There were special detailed protective regulations for the work performed by women and children in Hoechst, which I have presented. According to these, children under 12 years of age were not allowed to work in the plant, (doc. Jasne 29, exh. 42, bk 2, pg. 18). A few boys between 12 and 14 years of age were employed in the plant. However, they were only allowed to work for half a day and only at the express desire of their parents. (doc. Jasne 29, exh. 42, bk. 2, pg. 18, affidavit Brisbois doc. Jasne 4, exh. 7, bk. 1, pg. 70, affidavit Sme doc. Jasne 57, exh. 55, bk. 3, pg. 49, Jasne German transcript pg. 10083, English transcript pg. 9946, affidavit Snessarew doc. Jasne 19, exh. 38, bk. 1, pg. 58). The Russian parents were glad to do this because of the better food and the money. (Affidavit Brisbois doc. Jasne 4, exh. 7, bk. 1, pg. 71, affidavit Sme doc. Jasne 57, exh. 55, bk. 3, pg. 49, Jasne German transcript pg. 10083, English transcript pg. 9946). In the plant they were only used for very easy tasks, however, as for instance as messenger boys within the plant, cleaning bicycles and the like, mostly for the sake of appearance. (Affidavit Brisbois doc. Jasne 4, exh. 7, bk. 1, pg. 70). The boys were glad to be at the plant and loved it. A few older women who had come along from the Ukraine also worked voluntarily. They were not used in the plant but only in the camps, to clean the barracks and in the sewing rooms. (Affidavit Snessarew doc. Jasne 19, exh. 38, bk. 1, pg. 58, affidavit Sme doc. Jasne 57, exh. 55, bk. 3, pg. 50).

It was a general rule at the Hoechst plant, in the first place, that every foreign worker had to be examined when he was put to work and should only be used for work that corresponded to his abilities (affidavit Dr. Baldus, doc. Lautenschlaeger 16, exh. 31, bk. Lautenschlaeger 1, pg. 41).

c) Treatment, disciplinary measures.

This care corresponded to the attitude of the Betriebsfuehrer, Professor Lautenschlaeger, whose attitude as a doctor expressed itself in that he was especially considerate of the welfare of his workers and saw to it that they were treated decently.

1.) He had issued strict orders that the foreign workers were to be treated decently and justly, especially at work, in the plant, of course. (Jahne German transcript pg. 10081, English transcript pg. 9944). The foremen, in particular, were strictly forbidden to use force of any kind. (Hirschel German transcript pg. 10169, Engl. transcript pg. 10032, Poehn German transcript pg. 10193, English transcript pg. 10056, affidavit Baldus doc. Jahne 59, exh. 57, bk. 3 pg. 62, affidavit Brisels doc. Jahne 4, exh. 7, bk. 1, pg. 70). If, in spite of this, a German allowed himself to become guilty of any act of violence, then the German would, as shall be shown further on, be called to account and punished. (Jahne German transcript pg. 10081, Engl. transcript pg. 9944, Hirschel German transcript pg. 10169, Engl. transcript pg. 10032, Poehn German transcript pg. 10193, Engl. transcript pg. 10056).

2.) Naturally, it was not a simple matter to prevent/punishable acts and maintain discipline in such a large plant as Hoechst, which employed 12,000 persons. Nevertheless, at Hoechst it was primarily attempted to take preventive measures against crimes, especially by foreign workers, such as theft etc. and, if they happened nonetheless, to take care of them in the plant itself rather than run to the police about them. (Poehn German transcript pg. 10193, English transcript pg. 10054). The plant also did not allow itself to be deprived of this right to grant mercy when the members of the Works Security Guard became assistant policemen in 1944 and thus were obligated to report all offenses to the police.

Hoechst was able to arrange at that time that the plant management retained the right, even after 1944, to decide itself whether it would forward the reports of the Works Security Guard to the Police or not, (Peehn German transcript pg. 10193, Engl. transcript pg. 10054).

3.) A directive from Saukel, for which I have produced documentary proof, (doc. Jachne 32, Exh. 47, bk. 2 pg. 27) made the Betriebsfuehrer responsible for the maintenance of discipline and for this purpose they were allowed to inflict punishment. On the basis of this authority to punish, warnings and money fines could be imposed. In more serious cases a report was to be made to the police requesting punishment or a short term in a labor disciplinary camp. These punitive measures were prescribed for Germans as well as for foreign workers. The only difference was that for commitment to a labor disciplinary camp the Labor Office had to be informed in the case of German workers, and in the case of foreign workers the Gestapo handled the matter. The consequence, however, was the same. The workers were called in and either only warned or sent to a labor disciplinary camp for about 3 weeks, after which they returned to the plant. (Affidavit Dr. Spass, doc. Jachne 21, Exh. 52, bk. 1, pg. 72, 74, Hirschel German transcript pg. 10167, Engl. transcr. pg. 10029).

This punishment was not at the pleasure of the Betriebsfuehrer. In the circular letter addressed to Hoechst, which I have presented, of the Gaebmann of the German Labor Front in Frankfurt dated 23 September 1944, the Betriebsfuehrer were reminded, rather, that they themselves would be punished if they did not make sufficient use of their punitive powers. It says there that the Plenipotentiary General for Labor Allocation, Saukel, had considered it necessary to impose severe penalties on Betriebsfuehrer, in accordance with section 7 of regulation 13, for failing to use their punitive powers. (Doc. Jachne 32, exh. 47, bk. 2, pg. 27).

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Nonetheless the plant management made an effort to impose as few penalties as possible. (Affidavit Dr. Spiess doc. Jachne 21, exh. 52, bk. 1, pg. 83). More leniency was shown to foreign workers than to the native ones. Thus, for instance, no action was taken against the Belgian de Bruyn, who over a period of 466 working days had missed 27 days without excuse, because they were used to frequent absenteeism by foreign workers and ordinarily did not take any action in such cases. (Affidavit Ems doc. Jachne 57, exh. 56, bk. 3, pg. 51, affidavit Mueller doc. Jachne 58, exh. 56, bk. 3, pg. 52.). Naturally, with 12000 workers there were cases in the course of the years where punishment could not be avoided. An old, experienced lawyer was entrusted with disciplinary matters and he ensured that these matters were handled justly. Reports requesting the commitment of foreign workers into labor disciplinary camps were only made in about 5 cases. They concerned persons who had violated plant working regulations repeatedly and severely, had already been unsuccessfully punished with warnings and fines about 12 to 15 times, had then been warned again, but in spite of everything had again become guilty of such a gross violation of plant regulations that a report on them could no longer be put off. Before the report was made the earlier offenses were again gone over in detail with the shop steward. (Affidavit Spiess doc. Jachne 21, exh. 52, bk. 1, pg. 72/4, Hirschel German transcr. pg. 10167, English transcript pg. 10029, Jachne German transcript pg. 10088, Engl. transcr. pg. 9951). These persons only remained in the labor disciplinary camps about 3 or 4 weeks and then returned to the plant. (Affidavit Spiess doc. Jachne 21, exh. 52, bk. 1, pg. 84, Hirschel German transcr., pg. 10167, Engl. transcr. pg. 10029).

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4.) But those expenditures were inevitable in a large plant of that kind, and very rare exceptions. While punishment was demanded by Sauckel for the maintenance of work discipline, and the DAF threatened the Betriebsführung with punishment if they did not enforce sufficiently sweeping measures, the Hoechst plant primarily took the course of education. This is best shown by the circular letter of the Hoechst personnel department, dated 2 December 1942 in which it says: "In order to counteract the manifold disciplinary offenses committed by foreign workers, it is absolutely necessary in the future to instruct all newly arrived foreigners during the first few days in regard to the behaviour which will be expected from them while in Germany, as for instance, respect for plant property, the prohibition in regard to the passing on of passes, clean hygienic behaviour, etc." (Doc. Jachne 33, Exh. 38, Book 2, page 29).

If a German became guilty of an offense against a foreigner, which happened only in 3 - 5 cases however, then the plant took severe measures. (Hirschel transcript page 10178 German, page 10040 English, Jachne transcript page 10088 German, page 9951 English). When a Pole insulted a very quiet foreman in the most offensive manner after receiving an order, and this foreman then slapped the Pole in a sudden fit of rage, the German was punished, while the Pole received no punishment at all. (Poehn transcript page 10193/4 German, page 10055 English). The same thing occurred in the case of Bender. (Doc. Jachne 34, Exh. 49, Book 2, page 30).

Another example is the Eid - Gervason case. (Doc. Jachne 35, Exh. 50, Book 2, pages 31 ff.) This case especially shows, with what exactitude the investigations were carried out in order to make a just verdict possible, and to what extent regional peculiarities were respected.

But, in addition, it also shows that a different, and more strict, yardstick was used for Germans than for foreigners.

And finally, in the case of Schmidt, a German was discharged on the spot because he had made himself guilty of a dishonest act towards "a fellow foreign worker". (Doc. Jachne 36, Exh. 51, Book 2, page 37).

These documents show most conclusively, to what extent the plant management at Hoechst intervened on behalf of its foreign workers, safeguarded them energetically against encroachments and how it was willing to judge their own offenses in a mild way. It considered the foreign workers not as aliens but, as it says in the last mentioned document, as "foreign fellow workers". (Doc. Jachne 36, Exh. 51, Book 2, page 37).

- 5.) The Prosecution has presented the minutes from the Technical Directors meeting at Hoechst on 24 January 1944, from which it comes to the conclusion that, at the instigation of the plant at Hoechst, "measures were to be taken by the SS" against foreigners who did not return from their furlough. (Exh. 1363 NI 6151, Book 69, page 142 German, page 144 English). I was able to prove that this conclusion is erroneous.

This item in the minutes of the meeting is, first of all, not a decision arrived at at the meeting of the Directors, but is merely a report by Gebhardt (Affidavit Gebhardt, Doc. Jachne 54, Exh. 25, Book 3, page 42/3, Hirschel transcript page 10180 German, page 10042 English, Jachne transcript page 10088 German, page 9951 English), which is incorrect besides. A Herr Kohaut had been informed at Brussels that the General Plenipotentiary for Labor was trying to locate foreigners who had not returned to Germany after their furlough, through the police, and have them induced to return. (Affidavit Kohaut, Krauch 75, Exh. 203 Supplementary Volume Krauch 9). When Kohaut returned from

Brussels, he informed Gebhardt of this, who then spoke about this at the meeting himself. (Affidavit Gebhardt, Doc. Jaehne 54, Exh. 25, Book 2, page 42, Affidavit Kohaut Doc. Krauch 75, Exh. 203, Supplementary Volume Krauch 9).

A resolution to report such foreigners to the SS or Gestapo was never passed. It is also an established fact that the plant at Hoechst never took any measures to have non-returnees^{returned} by the SS or reported them to the SS or Gestapo. (Affidavit Spiess, Doc. Jaehne 21, Exh. 52, Book 1, page 64, Affidavit Gebhardt, Doc. Jaehne 54, Exh. 25, Book 3, page 43, Hirschel transcript page 10168 German, page 10030 English). Besides, there were only a few cases in which foreigners did not return from their furlough, and then they usually had very good excuses which were accepted. (Affidavit Spiess, Doc. Jaehne 21, Exh. 52, Book 1, page 64). Furthermore, the plant at Hoechst did not attach the slightest value to such unwilling elements (Affidavit Gebhardt, Doc. Jaehne 54, Exh. 25, Book 3, page 42).

Several documents were offered in regard to this point during the course of the cross examination of Jaehne:

- 1.) 2 letters of the Labor Office Amsterdam from the year 1944 (Exh. 2053 NI 11634).

Both were obviously intended for the investigation and return of workers. One of them concerns a worker from Griesheim who, however, according to a handwritten notice on the letter, had looked for a different job in Germany. The other one concerns a worker from Hoechst who had been missing for 8 months.

- 2.) An additional Exhibit 2055 NI 14824 contains 4 file cards of the Gebochem in Paris which obviously came to the Gebochem in Paris from a French agency and dealt with 4 missing French workers who had been borrowed from the Pardini firm. Two of those had intended to work at Hoechst, but had not reported there, as the cards showed.

These Documents merely prove that the Gebechem had been informed by the firms which had loaned out the workers, and the Labor Office at Amsterdam by the Labor Office at Hoechst that the workers were missing, but not that the plant at Hoechst had informed them of the missing workers or that it had demanded their return.

The Labor Office at Hoechst always had to be informed, just as it must still be informed today by the plant at Hoechst of the start of employment or the leaving of any worker, stating his name and the reason for his departure. Information of that kind has always been the basis for the establishment of the Labor Offices. The firm that loaned out the workers naturally had to be informed also if a loaned-out worker left his job, whether the Labor Office or the firm which lent the workers, then, by reason of these absolutely harmless and natural reports, took further steps to ascertain the whereabouts of the workers, never became known at Hoechst. Not even Hirschel, the personnel manager then in office at Hoechst, knew anything of this. (Hirschel transcript page 10188 German, page 10030/1 English).

6.) In addition the Prosecution has presented the minutes of the meeting of the Technical Directors at Hoechst which took place on 10 July 1944. (Exh. 1366 NI 6155, Book 69, page 190 German, page 152 English). Among other items it is stated there, that Roth reported about the measures taken by him to warn foreigners of the drinking of methanol (Methyl Alcohol), that the Gestapo would send methanol thieves to disciplinary labor camps, and that, in order to retain the workers for the time they are sent there, they should try to get a branch of the disciplinary labor camp at Hoechst. But in this case the minutes are also not very clear. This was not a resolution passed by the meeting, but only a suggestion by the one who spoke about it is, Dr. Roth. There has never been a branch of a disciplinary labor camp at Hoechst. (Affidavit Spiess, Doc. Jaehns 21, Exh. 52, Book 1, page 64/65).

- 7.) At the meeting of the Technical Directors on 22 May 1944 at Hoechst it was announced according to the minutes of the meeting, that foreigners could be detailed to home anti-aircraft batteries (Heimabflak) in order to release Germans in key positions. (Exh. 1364, Book 59, transcript page 188 German, page 149 English). It was possible for the plant management at Hoechst to prevent details of that kind, so that no foreigners became active in the home anti-aircraft units at Hoechst. (Affidavit Simon, Doc. Jachne 15, Exh. 32, Book 1, page 43, Affidavit Snessarew, Doc. Jachne 19, Exh. 38, Book 1, page 58). The detailing of part of the staff to the construction of the Westwall was due to orders by the authorities. (Affidavit Spiess, Doc. Jachne 21, Exh. 52, Book 1, page 65).
- 8.) For the maintenance of order and especially for the prevention of theft, approximately 90 guards, called Works Police, had been detailed to the plant since 1920. At the end of 1944 they had to carry pistols, on orders from the police. But the plant issued orders that the pistols had to be carried concealed in order not to jeopardize the civilian character of the Works Police. (Polem transcript page 10192 and 10211 German, page 10053, 10072 English, Affidavit Kullmann Doc. Jachne 22, Exh. 53, Book 1, page 66).

Against the foreign workers the Works Police had only the same authorities as against the Germans, and dealt with them only in the same way as with the German workers and employees. (Affidavit Kullmann, Doc. Jachne 22, Exh. 53, Book 1, page 66).

The camps of the foreign workers were not guarded by the Works Police. They had special camp guards, old men, to whom all in all 6 quite safe pistols had been issued which fired blanks or non lethal gas cartridges. (Affidavit Kullmann, Doc. Jachne 22, Exh. 53, Book 1, page 66/7, Affidavit Snessarew, Doc. Jachne 19, Exh. 38, Book 1).

page 57). They too were prohibited to inflict corporal punishment. (Hirschel German records, page 10170, English records page 10033). The Russian cook Snessarew states in regard to the camp commanders that the commander of the Russian barracks camp was "not bad", and that he had never observed that one of his fellow nationals had been struck. (Affidavit Snessarew, Doc. Jaehne 19, Exh. 38, volume 1, page 57).

d) Care.

Everything possible was done on the part of the plant management for the housing and food supply of the foreigners (Affidavit Humann, Doc. Jaehne 8 Exh. 11 volume 1, page 74). Lautenschlaeger requested the social referent to see to it that the meals and quarters of the foreign workers were constantly improved and that he should make the greatest efforts in this respect with no regard for the costs. (Affidavit Spiess, Doc. Jaehne 16, Exh. 33, volume 1, page 46). In spite of his enormous burden of work he personally inspected every month the housing and food supply of the foreigners. (Affidavit Spiess, Doc. Jaehne 16, Exh. 33, volume 1, page 46).

1.) Housing.

The foreigners were housed, just as the German assembly workers, in the so-called bachelor's home, in peace time used as shelter for homeless people, furthermore in hotels, but primarily in barracks. (Jaehne German records, page 10073, English records page 9937, Hirschel German records, page 10169, English records, page 10032). These barracks were of the same type as those used by the Reich Labor Service in peace time. They were large, with plenty of space and heating facilities, partly equipped with central heating and comfortably furnished. Jaehne made always additional coal available for the heating which was actually earmarked for the supply of the plant with electric energy. The barracks were partitioned into single rooms. The beds were generally of the double-decker type and had straw mattresses.

The intellectuals and women had ordinary beds mostly with linen. There were special white-painted childrens' beds for babies. Wardrobes, tables and chairs were available in sufficient quantities. (Jachne German Records page 10073, English records page 9937f., Hirschel records, German pages 10169/70, English records pages 10032/33).

Arrangements had been made for side-rooms. There was a sufficient number of toilet- washing and shower facilities. In addition to that there were canteens and special living rooms which were equipped with radijs and which had an display of newspapers, periodicals and books. (Hirschel German records, page 10170, English records page 10033).

All rooms were kept in a clean condition by a detail of char-woman at the expense of the plant. The problem of noxious insects, which unfortunately were consistently brought in by the foreigners, was dealt with by frequent disinfection of the rooms, renewal of the straw in the paillasses and by delousing of the newly arrived persons. The camps are still in existence at this time and are mostly occupied by "displaced persons". (Hirschel, German records page 10170, English records, page 10033, Affidavit Snessarew, Doc. Jachne 19, Exh. 38, volume 1, page 57, Affidavit Balduz, Doc. Jachne 59, Exh. 57, volume 3, pages 61 and 62).

One also made arrangements that the overall appearance of the camps looked like that of a residential district. The surroundings of the barracks were kept clean, and beautified with flower gardens. (Jachne, German records page 10074, English records, pages 9937/38).

Only the camps housing the prisoners of war were surrounded by barbed wire which, however, was not the case with the other camps especially not with the camps housing the eastern workers. The camps, just as any other estate, were obviously enclosed by a fence as a protection against burglars. (Jachne, German records, page 10074, English records, page 9937, Affidavit Snessarew, Doc. Jachne 19, Exh. 38, volume 1, page 57 Affidavit Bns, Doc. Jachne 57, Exh. 55, volume 3, page 50, Affidavit Kullmann, Doc. Jachne 22, Exh. 53, volume 1, page 67).

Special trusted persons were appointed by the individual nationalities who freely expressed all their wishes to the plant management. (Hirschel, German records, pages 10170/71, English records, page 10033).

2.) Food supply.

An especially active and energetic expert namely, the witness de Vries, was called to take charge of the food supply for the foreign workers and was put in charge of the entire messing facilities for the foreign workers. When in 1942 he started in his position, he was expressly told by the plant manager, Professor Lautenschlaeger, and the section chief, Dr. Hirschel, as follows: "You have unlimited funds at your disposal, so buy whatever you can. The costs will be immaterial in this respect. If these people are to work in our plants they must be adequately fed." (Affidavit de Vries, Doc. Jaehne 17, Exh. 34, volume 1, page 48). Accordingly, de Vries was not subjected to any restrictions in regard to funds. Moreover, he was not even requested to give an account about the amount of his expenditures. (Jaehne, German records page 10074, English records, pages 9937/38, Affidavit de Vries, Doc. Jaehne 17, Exh. 34, volume 1, page 50, Hirschel, German records, page 10171, English records, page 10033).

Wherever he had a chance to buy additional ration-free foodstuffs he acted promptly and bought the most expensive and high-grade foodstuffs for hundreds of thousands of Marks, as for example the most expensive marmelade for the Russians costing in excess of RM 4.- per kilogram, furthermore fruit for dessert and very expensive vegetables and the like in winter time. (Affidavit de Vries, Doc. Jaehne 17, Exh. 34, volume 1, page 50).

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De Vries saw to it that the butchers delivered the best meat they had and that only high-grade foodstuffs were used. (Affidavit de Vries, Doc. Jachne 17, Exh. 34, volume 1, page 50, Affidavit Noll, Doc. Jachne 18, Exh. 37, volume 1, pages 54/55). When the occupation troops moved in they found such a large stock of foodstuffs that it was possible to feed 16 to 17 000 displaced persons from these food supplies, as compared to a number of 3000 foreign workers at the most who previously received their rations from these supplies. (Affidavit de Vries, Doc. Jachne 17, Exh. 34, volume 1, page 50).

6 separately located large kitchens with the most modern refrigerating equipment were built for the feeding of the foreign workers. There were separate kitchens for each national group employing their own cooks in order to satisfy the taste of the different nationalities. In addition to that there were especially fine diet kitchens, which was van de Vries' specialty. (Affidavit de Vries, Doc. Jachne 17, Exh. 34, volume 1, page 49, Affidavit Kraemer, Doc. Jachne 20, Exh. 39, volume 1, page 61).

These kitchen facilities, where the meals were prepared for only 3 000 foreign workers, were completely adequate, after the occupation, for the feeding of 5 times that number of displaced persons, which proves the great capacity of these installations. (Affidavit de Vries, Doc. Jachne 17, Exh. 34, volume 1, page 49, Jachne, German records, page 10075, English records, page 2938).

The meals were taken in large dining rooms which were very well furnished and equipped with an adequate number of tables and chairs. Notwithstanding the fact that a lot of porcelain was broken, de Vries again and again managed to replace the broken pieces at great costs. (Affidavit de Vries, Doc. Jachne 17, Exh. 34, volume 1, page 53).

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One saw to it that the foreign workers were actually receiving the cold meals they were entitled to in addition to the warm meals. (Jachne, German records, page 10075, English records, page 9938). If complaints were lodged they were examined by Dr. Hirschol personally. Otherwise, too, the food was tested constantly not only by specially appointed chemists but also by Professor Lautenschlaeger personally and was checked by Dr. Hirschol and eventually even by the representatives of the firms assigning workers on a loan basis. (Affidavit de Vries, Doc. Jachne 17, Exh. 34, volume 1, page 51, Affidavit Spiess, Doc. Jachne 18, Exh. 33, volume 1, pages 46/47, Affidavit Dr. Kraemer, Doc. Jachne 20, Exh. 39, volume 1, page 80, Jachne, German records, pages 10074/75, English records, page 9938.)

We succeeded in obtaining 4 original menus from that time. It is clearly shown in these menus that the food prepared in the kitchens was good and diversified and was prepared to suit the tastes of the individual groups. They furthermore show, however, how plentiful the food was. The very high grade foodstuffs like meats and fats were delivered in such large quantities, ^{that} ~~what~~ ^{they} are more or less inconceivable to the average German in present days. I single out but one example: The kitchens for the foreign workers received 500 gram of meat per week and person, whereas the prisoners of war, in whose case special Wehrmacht regulations with respect to rations were in effect, received 350 gram per week. (Affidavit de Vries, Doc. Jachne 51, Exh. 36, volume 3, page 27 ff).

In addition to that, the food delivered on holidays was of especially fine quality. Thus de Vries succeeded in getting 3 000 large veal-outlets as late as for Christmas 1944, at a time when the food situation in Germany had already become very critical. This resulted in the fact that the local civilian population of Hoechst had to do without veal outlets on Christmas 1944.

(Affidavit de Vries, Doc. Jachne 17, Exh. 34, volume 1, page 52, Affidavit Noll, Doc. Jachne 54, Exh. 37, volume 3, page 54). In addition to that, every foreign worker received a Christmas cake, a piece of gingerbread (250 gram), furthermore apples, beer and 65 gram of candies. At that time candies were not available any more in the open market. (Affidavit de Vries, Doc. Jachne 17, Exh. 34, volume 1, pages 52/53, Affidavit Snessarow, Doc. Jachne 19, Exh. 38, volume 1, page 56).

The food issued by the Hocht plant was plentiful and adequate, a fact which also applied to the Eastern workers according to the statement given in his affidavit by the then Russian cook Snessarow. (Affidavit Snessarow, Doc. Jachne 19, Exh. 38, volume 1, page 56f.).

The high quality of the food given to the foreign workers in the Hocht plant was such a known fact that the plant was rebuked by the Party (German Labor Front), and by the German workers in the plant and other civilians, because of the fact that the foreign workers received better meals than a German civilian could obtain for himself under normal conditions. (Affidavit de Vries, Doc. Jachne 17, Exh. 34, volume 1, page 50, affidavit Humann, Doc. Jachne 8, Exh. 11, volume 1, page 74, Affidavit Brisbeis, Doc. Jachne 4, Exh. 7, volume 1, page 70).

This impression was also shared by the French national, Langlois, who wanted to rent a room in town. In doing so he had to separate himself from the camp food supply and, like the Germans, had to live on food ration cards so that, as it is stated in the document, the final result was that he received less food for his own needs. (Doc. Jachne 37, Exh. 40, volume 2, page 39, Hirschel, German records, page 10184, English records, page 10045). This fact was also confirmed to the American trustee after the occupation by the witness Gebhardt.

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(Affidavit Gebhard Doc. Jachne 45, Exh. 3, volume 3, pages 11 and 12). The same was also indicated by Dr. Kraemer who was one of the 5 persons who were constantly inspecting the food in the kitchens of the foreign workers. Only once during the entire period did he mark the food with the note "bad". He frequently found that the evening meal of the Russians was better and more adequate than that of the Germans.

(Affidavit Dr. Kraemer, Doc. Jachne 20, Exh. 39, volume 1, page 60). However, Professor Lautenschlaeger turned down the application submitted by the chemists on night duty in the plant for permission to have their meals in the Russian mess instead of the regular German food. (Affidavit de Vries, Doc. Jachne 17, Exh. 34, volume 1, page 50).

The adequacy of the meals can be seen best from the fact that the doctors did not find any losses in weight. Only the Russian foreign workers were subjected to a routine check as to loss of weight since they received a little less food than the rest of the foreign workers. Yet a gain of weight could be found in the cases of most Russians especially among the younger ones. The young Russians looked healthy and well-fed. (Affidavit Dr. Baldus, Doc. Jachne 69, Exh. 57, volume 3, pages 59/60, Affidavit de Vries, Doc. Jachne 17, Exh. 34, volume 1, page 51). The Russian cook Snessarew also confirms that only those Russians lost weight who used to drink methanol. (Affidavit Snessarew, Doc. Jachne 19, Exh. 38, volume 1, page 57).

It is a fact that the American Major Raddigan, at the time when the foreign workers were taken over by the Americans, has expressed his recognition to the witness de Vries for his good performance in feeding the foreign workers and has entrusted him with the food supply for the displaced persons.

(de Vries' affidavit, Jacobs Doc. 17, Exh. 34, Book 1, Page 48, de Vries affidavit, Jacobs Doc. 50, Exh. 36, Book 3, page 24).

3. Clothing

The Hoechst plant also looked after the clothing of the foreign workers in the most generous way. All workers coming from the East, most of whom had arrived with very poor clothing, were in a short time newly dressed. Their own tailoring and shoemaking shops were provided, so that soon there was no longer any difference as to clothing between Germans and Easterners. (Baldus affidavit, Lautenschlager Doc. 16, Exh. 31, Lautenschlager Book 1, Page 43, Kiosakalt affidavit, Jacobs Doc. 6, Exh. 9, Book 1, Page 73, Esmann Affidavit, Jacobs Doc. 8, Exh. 11, Book 1, Page 11, Jacobs German transcript page 10079, English transcript Page 9942). The plant likewise provided working clothes. The things were washed in the plant's own laundry. (Jacobs/German transcript Page 10079, English transcript Page 9942, Jacobs Doc. 30, Exh. 43, Book 3, Page 21).

4. Medical Care

It is obvious that a plant, in which such a physician and scientist as Prof. Lautenschlager was ~~Deutcher~~^{Dr.}, did especially much for the medical care of its workers.

The plant had its own first-class infirmary with laboratory, X-ray department, hydro and electro-therapeutic equipment, Zander room and massage department. The fact that after the occupation this infirmary was requisitioned by the occupying power for its numerous military and civilian personnel proves how good it is. This infirmary, with its waiting and treatment rooms, was just as freely

at the disposal of the foreign workers as the Germans. (Baldus affidavit Jacques Doc. 59, Exh. 57, Book 3, Page 54, Jacques German transcript Page 10094, English transcript Page 9947/8).

Treatment was provided by 2 German doctors as well as a German women doctor and after 1944 a French doctor. Examinations were naturally conducted in a decent manner. (Dr. Baldus' affidavit, Jacques Doc. 59, Exh. 57, Book 5, Page 54 f., Rosecrance affidavit, Jacques Doc. 19, Exh. 38, Book 1, Page 57). Therapeutic measures were prescribed and applied to more than an adequate extent. No medicine was spared if the health of a foreign worker was at stake. Especially valuable drugs, which were no longer available at all in regular drugstores and which were therefore out of reach for ordinary civilians, were supplied from the plant's stocks, even in case where this was contrary to government saving regulations. (Dr. Baldus' affidavit, Jacques Doc. 59, Exh. 57, Book 3, Page 55).

The foreigners, therefore, were better off with regard to medicines than the Germans outside the plant. (Dr. Baldus' affidavit, Jacques Doc. 59, Exh. 57, Book 5, Page 56). They were also given preventive care. Thus, for example, they received priovit pills just as did the Germans. (Jacques Doc. 39, Exh. 59, Book 2, Page 44).

Without being asked, the first American commandant, Major Raddigan, even gave the plant physician, Dr. Baldus, a testimonial to the effect that according to his findings the treatment and therapy for the foreigners were extremely decent. (Dr. Baldus' affidavit, Jacques Doc. 59, Exh. 57, Book 3, Page 55).

In case of plant accidents the doctor naturally assisted the injured person immediately. A doctor was at his disposal day and night. (Dr. Baldus' affidavit, Jacobs Doc. 59, Exh. 57, Book 3, Page 55, Snossarow affidavit, Jacobs Doc. 19, Exh. 38, Book 1, Page 57). In case of emergency the doctor visited the foreign workers in their own living quarters and treated them there (Dr. Baldus affidavit, Jacobs Doc. 59, Exh. 57, Book 3, Page 56). However, a well equipped, adequate infirmary barrack with about 90 beds was also available for bad patients, which likewise contained the apartment of the Russian woman doctor. The barrack is now serving as an infirmary for the Poles working for the Military Government. (Dr. Baldus affidavit, Lautenschlager Doc. 16, Exh. 31, Lautenschlager Book 1, Page 42, Hirschel German transcript Page 10171, English transcript Page 100

In more serious cases the patients were transferred to special clinics. (Jacobs German transcript Page 10084, English transcript Page 9948). Thus, the witness Snossarow describes the case of a Russian comatriot who in spite of constant warnings had drunk methanol and seriously poisoned himself in this way. It is very dangerous to drink methanol; nevertheless after the occupation 84 Russians died in one night alone from methanol poisoning. In this case, however, they succeeded in saving the Russian. He had been transferred to the Loebel Hospital, had been there 8 months, had then gone to the Frankfurt Hospital and was released there after 1½ years as cured. (Snossarow Affidavit, Jacobs Doc. 19, Exh. 38, Book 1, Page 57/8). From another document it appears that in the beginning of 1948 - naturally before the occupation - the woman doctor, Dr. Kuhn transferred 5 sick Russian children first to the Frankfurt Hospital and then, since the latter was full, to a children's sanatorium. (Jacobs Doc. 40, Exh. 60, Book 2, Page 45).

The foreigners at that time had complete confidence in the medical treatment and felt that, as the Russian Grossmeyer has testified, it was "definitely good." (Grossmeyer Affidavit, Jacobus Doc. 19, Exh. 38, Book 1, Page 57). Former foreign women workers of the plant - Russians, Yugoslavians, Italians - who remained in Hoechst are still coming to the German woman doctor of the plant, Dr. Kuhn, today for treatment in her private practice. (Dr. Kuhn's Affidavit, Lautenschlaeger Doc. 17, Exh. 32, Lautenschlaeger Book 1, Page 45).

How great the confidence in the doctors was, however, is best shown by the card index of patients, which is still available today. In the course of the years a total of 7332 foreign workers were gradually employed in the Hoechst plant, some of them for only a short period of time. No fewer than 6086 of these visited the medical infirmary, most of them many times and with trivial complaints. (Dr. Baldus' affidavit, Jacobus Doc. 59, Exh. 17, Book 3, Page 56/7).

This extensive medical care for the foreign workers was especially due to the personal services rendered by Professor Lautenschlaeger. (Jacobus German transcript Page 10084, English transcript Page 9947, Dr. Baldus' affidavit, Lautenschlaeger Doc. 16, Exh. 31, Lautenschlaeger Book 1, Page 41/3). When it so happened that in spite of constant warnings society measures, Russians had drunk methanol and seriously poisoned themselves, he himself placed his medical skill at their disposal and in spite of his tremendous load of work as Plant Manager took the time to treat the poisoned men himself. (Dr. Gisseler's affidavit, Lautenschlaeger Doc. 13, Exh. 28, Lautenschlaeger Book 1, Page 23, Jacobus German transcript Page 10084, English transcript Page 9948). At the executive meetings, at which only affairs of general importance were usually discussed,

Professor Lautenschlaeger informed the plant management about the individual patients and frequently expressed his joy when he succeeded in saving a human life. (Dr. Gieseler's affidavit, Lautenschlaeger Doc. 13, Exh. 28, Lautenschlaeger Book 1, Page 33). This man, who as ~~Dr. Gieseler~~ ~~Rudner~~ actually did not find a minute's rest during the day, helped out in emergency cases at night in the maternity ward of the foreign workers' infirmary. (Jasno German transcript Page 10104, English transcript Page 9968/9). When the head of the Chemical-Bacteriological Department, Dr. Julius Weber, who was assigned as an assistant to the foreign workers' infirmary, reported that if further injections were made of the rare and expensive botulin the plant's entire supply would be exhausted, Professor Lautenschlaeger ordered that the entire supply should be injected into the poisoned Russians down to the last ampoule, without regard to the fact that this valuable remedy would no longer be available to the German population. This was then actually done. (Dr. Julius Weber's affidavit, Lautenschlaeger Doc. 37, Exh. 40, Lautenschlaeger Book 3, Page 8).

Such an attitude on the part of the Plant Manager naturally had to have corresponding effects. The result was the gratifying fact that the average mortality among the foreign workers in Hoechst was lower than that of Germans in the Reich during the peacetime years from 1931 to 1936. (Dr. Baldus' Affidavit, Jasno Doc. 50, Exh. 58, Book 3, Page 65.)

5.) Accident Prevention

The above-mentioned fact shows well enough that the work in Hoechst was neither dangerous nor unhealthy. (Hirschel German transcript Page 10164, English transcript Page 10027, Dr. Baldus' affidavit, Jasno Doc. 50 Exh. 57, Book 3, Page 61, Jasno German transcript 10082, English transcript Page 9945).

The prevention of accidents was a special hobby of Jacob's, since as Chairman of the "Technical Committee of the Professional Federation of the Chemical Industry in Germany" he wanted to make Hoechst an example for the entire chemical industry in Germany. (Jacob's German transcript Page 10085, English transcript Page 9948/9). In connection with this no distinction was made between Germans and foreigners. On the contrary, particular pains were taken with the foreign workers. For example, they were given regular instruction by their interpreters in their native language. (Eckhardt's affidavit, Jacob's Doc. 14, Exh. 22, Book 1, Page 40, Jacob's German transcript 10085, English transcript Page 9948/9). The number of accidents among the foreign workers was therefore very low. (Jacob's German transcript Page 10085, English transcript Page 9948/9).

Likewise in the field of air raid protection no expense was spared for the foreign workers and special air raid shelters were built for them in their camps and in their messes in addition to the regular ones. (Jacob's German transcript Page 10086, English transcript Page 9949, Poehn's German transcript Page 10191, English transcript Page 10052). Moreover, Jacob had ordered that the foreign workers could use the general air raid shelters just as well as the Germans, even though Party orders forbade this. (Poehn's ^{German} transcript Page 10191/2, English transcript Page 10052; Jacob's German transcript Page 10086, English transcript Page 9949).

6. Leave and Pay

Some of the foreign workers could go on leave very frequently. (Gebhardt affidavit, Jacob's Doc. 45, Exh. 3, Book 3, Page 12). Even toward the end of the war this was restricted by government orders just as with Germans. Hoechst tried to get around these regulations as much as possible (Jacob's German transcript Page 10086, English transcript Page 9949).

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The pay was on principle the same as that of the Germans. (Doc. Jachne 30, Exh. 43, Book 2, P. 30; Transcript Hirschel P. 10166 German, P. 10028 English). Since higher piece-rates were fixed for foreign workers, they earned even more than the Germans. (Affidavit Gebhardt, Doc. Jachne 45, Exh. 3, Book 3, P. 12). The German workers frequently complained about this. (Affidavit Ems, Doc. Jachne 57, Exh. 55, Book 3, P. 49; Transcript Jachne P. 10087 German, P. 9950 English; Transcript Hirschel P. 10166 German, P. 10028 English). The Document Jachne 31 (Exh. 46, Book 2, P. 32) shows that f.i. the coopers complained that a Belgian earned 10% more than the German did for the same work. With regard to this the plant management, however, only stated that such things had happened before. (Doc. Jachne 3, Exh. 46, Book 2, P. 24). Besides, the married foreign workers were additionally paid RM 1.50 per day as a separation and lodging allowance. This was sufficient for defraying the expenses for food and accommodation in the camp so that the rest was left to them at their free disposal. (Affidavit Simon, Doc. Jachne 15, Exh. 32, Book 1, P. 43).

For the rest, foreigners were not only employed as ordinary workers, but also as so-called chemistry workers (Chemiewerker), chemists, physicians, apothecaries and commercial employees and received accordingly high salaries. (Transcript Hirschel P. 10166 German P. 10028 English). Thus, the French analytical chemist Hascher was paid about RM 800.- per month, a salary which was at that time considerably high, even for a graduate from a German academy, and with which Hascher was able to buy a considerably higher amount of goods in France than in Germany, in consequence of the rates of exchange of that time. In addition to this, Professor Lautenschlaeger wanted to do whatever was possible in order to obtain for Hascher the payment of the family allowance of RM 20.- per person, which amounted to a further RM 100.- a month for Hascher's numerous family.

(Affidavit Ehrhardt, Doc. Lautenschlaeger 15, Exh. 30, Book Lautenschlaeger, P. 40). Thus, the witness Gebhardt was able to prove to the American Lieutenant Colonel Baker after the occupation that especially the Belgian foreign workers were paid higher wages than the Germans and had in many other things been in a better position, as f.i. with regard to leave and food. (Affidavit Gebhardt, Doc. Jaehns 45, Exh. 3, Book 3, P. 11/3).

7.) Organization of leisure time.

In spite of the prevailing war conditions, provision was made in Hoochst for the entertainment of the foreign workers. As mentioned above, there were special canteens and day-rooms with newspapers, magazines, books and radio in all camps. Moreover, efforts to promote entertainment were particularly furthered. Theatrical performances and concerts in the evenings, humorous shows on afternoons and movies were shown, opportunity for sports was offered (Transcript Jaehns P. 10086 German, P. 9948/9 English). The chief of the Personnel Department frequently attended these performances, as well as the particularly nicely organized Christmas celebrations (Doc. Jaehns 41, Exh. 44, Book 2, P. 47) in order to demonstrate the particular interest which the plant management took in the welfare of the foreign workers. (Hirschel Transcript P. 10172 German, P. 10035 English).

8.) Conclusion

All these things show that the treatment given to foreigners in Hoochst was exemplary and that everything at all possible was done for them. (Affidavit de Vries, Doc. Jaehns 17, Exh. 34, Book 1, P. 53; Affidavit Brisbois, Doc. Jaehns 4, Exh. 7, Book 1, P. 70; Affidavit Klopschalt, Doc. Jaehns 5, Exh. 9, Book 1, P. 72/3; Affidavit Humann, Doc. Jaehns 8, Exh. 11, Book 1, P. 74/5). Hoochst had nothing to conceal, if in other plants, in compliance with any binding orders issued by authorities, Army or Party agencies,

documents have been destroyed, this was not the case in Hoechst, since the documents are existing there until this day. (Transcript Pochm P. 10197 German, P. 10058 English; Transcript Jacobus P. 10095/6 and 10105 German, P. 9959/60 and 9969 English).

In general one had indeed the impression that the foreign workers, after a first period of getting accustomed and of home-sickness, felt very comfortable. (Transcript Jacobus P. 10090 German, P. 9953 English; Hirschel P. 10171 German, P. 10035 English). Thus, 10% of all Belgians arranged that their wives joined them, and two brothers their mother. Foreign married couples went on leave and came back together. Eastern workers declared that they wished to stay in Hoechst after the war, since they had better living conditions there than in their native country. (Affidavit Ems, Doc. Jacobus 23, Exh. 54, Book 1, P. 68; Affidavit Hummer, Doc. Jacobus 8, Exh. 11, Book 1, P. 74/5).

All these things prove that the foreign workers had no complaints against their treatment, their work and their stay in Hoechst.

f) Affidavit de Bruyn

The Prosecution submitted only one affidavit against my client concerning the foreign workers complex, namely that of the former cabinet-maker, now Belgian office clerk de Bruyn. I found it unnecessary to cross-examine this affiant because this affidavit contains such obviously incorrect statements that I was in a position to refute its contents in all important points by counter-evidence.

- 1.) De Bruyn says in his affidavit that in June 1943 he was brought from the prison in Antwerp to Aachen and from there to Hoechst, where he stayed up to March 1945.

Evidently he wants thereby to emphasize the lack of voluntariness of his work in Germany. (Affidavit de Bruyn, Exh. 1367, NI 11513, Book 69 Page 207 German, Page 164 English).

Since the records on the employment of foreign workers in Hoechst were not destroyed I was able to trace the employment card of this witness. The chief of the personnel office in Hoechst testifies that the employment card shows that the witness came to Hoechst as a staff member of the firm assigning workers on a loan basis, De Witt, of Antwerp. One had never the impression that this firm sent workers who had been compulsorily recruited. On the contrary, at least part of the workers had already been employed with the firm for years as workers of old stock. (Affidavit Ens, Doc. Jaehne 57, Exh. 55, Book 3, Page 50/1). A decisive argument against the alleged lack of voluntariness of his employment in Germany is the fact that de Bruyn, during the short period of his employment in Hoechst went, not less than 3 times on leave to his native country, for a total of 39 days, and always returned voluntarily. (Affidavit Ens, Doc. Jaehne 57, Exh. 55, Book 3, Page 51).

2.) The affiant says that it would be difficult to describe the life in Hoechst, it might have been called "inferno". (Exh. 1367 NI 11513, Book 69, P. 207 German, P. 164 English).

I produced detailed evidence concerning the life of the foreign workers in Hoechst and refuted this allegation.

3.) The affiant alleges that 10,000 foreign workers had been in Hoechst, among them Italian prisoners of war, Frenchmen and Russians. Russian soldiers had been compelled to work immediately, although they had been wounded.

I point to the fact that Russian and Italian prisoners of war were never at the plant at all. The former French prisoners of war had already been discharged when de Bruyn came to the plant in June 1943. (Doc. Jasone 38, Exh. 41, Book 3, P. 41; Transcript Hirschel P. 10162 and 10176 German, P. 10025 and 10038 English). The soldiers of Russian nationality who had worked for a time in the plant were German soldiers who had fought against Russia. (Transcript Hirschel P. 10162/3 German, P. 10025 English; Affidavit Dr. Baldus, Doc. Jasone 59, Exh. 57, Book 3, P. 51; Affidavit Shossarew, Doc. Jasone 19, Exh. 38, Book 1, P. 56).

4.) De Bruyn alleges he had worked 56 hours at the beginning, finally 12 hours a day, including Sundays. (Exh. 1367, NI 11613, Book 69, P. 207 German, P. 184 English).

De Bruyn's working card shows that up to 14 March 1945, the date when he left, (altogether 527 weekdays) he had worked 3953 hours on 466 working days, thus an average of 8½ hours a day, and that during this whole period he was employed in the plant only on 8 Sundays. (Affidavit Ihm, Doc. Jasone 57, Exh. 55, Book 3, P. 51). Furthermore I refer to the circular letter of the Hoechst plant management of 1944 in which maximum working hours were fixed and according to which holiday work was only allowed in quite exceptional cases. (Doc. Jasone 29, Exh. 42, Book 2, P. 18).

5.) The affiant alleges that the work had been throughout injurious to health.

The witness Dr. Baldus has for 30 years been plant physician in Hoechst. He testifies that in consequence of the protective devices the work was by no means injurious to health and that during this whole period he never found any occupational diseases as a result of working conditions which were injurious to health. (Affidavit Dr. Baldus, Doc. Jasone 59, Exh. 57, Book 3, P. 50/1; Affidavit Mueller, Doc. Jasone 58, Exh. 57, Book P. 52).

6.) In regard to the food de Bruyn says that twice as much would have been necessary to satisfy their hunger, that the barracks were dirty, teeming with vermin, the paillasses never were refilled. That the camp was surrounded by barbed wire and patrolled by the plant guard.

I may, in regard to question of food and billeting, refer to my detailed statements which I have already made above to these points and in which I have also stated that only the prisoner of war camp, but not the camps of other foreign workers, and especially not the one of the Eastern workers, was surrounded by barbed wire, and that none of the camps were patrolled by the plant-guard. Otherwise the affiant's own conduct speaks against his statement, when he was temporarily employed at Wiesbaden-Biebrich he kept his living quarters at Hoechst, and did not shy from the daily exertions of travelling back and forth. This he surely would not have done had he been dissatisfied with his quarters and the food at Hoechst. (Affidavit Mueller, Doc. Jasone 58, Exh. 56, Book 3 P. 53). Never has he made complaints about bad quarters and food. (Affidavit Mueller, Doc. Jasone 58, Exh. 56, Book 3, P. 52).

7.) The affiant states further that the workers were beaten in the plant as well as in the camps by the foremen and camp leaders, even with the fist and a stick.

To this point may I refer to ^{the} fact, which I have proven above, that it was most strictly forbidden to beat foreign workers and that, if it still occurred in a moment of excitement, the works management took energetic action, and that a more severe standard was applied to Germans than to foreigners who had taken part in a brawl.

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I have further demonstrated that the foreign workers freely took advantage of their right to complaints, and that nevertheless only in very rare cases did excesses against foreign workers become known, be it that someone was hit or that a dishonesty occurred, and that in these cases the works management took energetic action against the guilty Germans.

8.) The affiant further states that children between 10 and 12 years and women over 50 had to work in the factory.

I refer to my earlier statements to this point, according to which children under 12 did not work at the plant at all, and children between the ages of 12 and 14, as well as older women, only upon their own request, and that they then were given light work.

9.) The affiant claims that prisoners of war worked in all departments at Hoechst.

I have already pointed out that when de Bruyn was in the plant, no prisoners of war at all were occupied there, since the French prisoners of war had already been transferred into a civilian work relationship. (Doc. Jaehne 38, Exh. 41, Book 2, P. 41; Hirschel Transcript, page 10176 German, page 10038 English.)

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10.) The affiant claims that at the end of his stay with the I.G. he only weighed 48 Kg.

This is rather improbable. At the time of his employment he weighed 59.8 kg., nine months later he weighed 58.5 kg. This small reduction of 1.2 kg. may be a temporary variation in weight. Since the feeding conditions did not change later on, it is not explained why de Bruyn at the time of his discharge from the plant should only have weighed 48 kg. (Affidavit Dr. Baldus, Doc. Waacke 59, Exh. 57, Book 3, Page 80).

11.) Finally the affiant states that the medical care was fit for "animals", so that it was prohibited to fall ill, as this would have cost ones life. That injured workers received no care, and were forced to help themselves with their own means.

The Court will recall that the Defendant Jachne, when questioned as his own witness on this point, was seized with such strong emotion when recalling this accusation of the affiant de Bruyn that he hesitated, and that it took him some time to compose himself and to be able to continue with his testimony.

I have described above how particularly Professor Lautenschlaeger was greatly interested in the medical care of the foreign workers. Therefore I do not wish to repeat myself, but only wish to state that de Bruyn is most clearly contradicted by his own actions.

The medical index cards of the foreign workers, as well as all other documents pertaining to the foreign workers, are still

available at the Hoechst Plant. Also the medical card of the witness de Bruyn could still be found. I attached a copy to the affidavit of Dr. Baldus (Doc. Jahne 59, Exh. 57, Book 3, Page 63). From this it results that de Bruyn during his 1 3/4 years at Hoechst visited the dispensary no less than twenty times, usually because of minor ailments and not counting calls for the purpose of changing dressings, etc. He appeared for the first time because of a reddening of his heels and the tips of his toes, another time because of a boil, two days later because of an abrasion. In January 1944 he was treated for rheumatism of the loins with hot air and massage. When on this occasion he mentioned that he was quartered together with a fellow worker who was suffering from a sore throat, a throat scraping was at once made for a bacteriological test. Only six days later he showed up with a decayed tooth, and was sent to the dentist. A month later he appeared to have another tooth treated.

In December 1944 he appeared because of bronchitis, and received high grade medicines, i.e. Kresival and Dikodid. At that time he was not even employed at Hoechst, but at Wiesbaden-Biebrich where he did not go to work, simply in order to be able to visit the doctor at Hoechst. He certainly would not have done this if he had feared the treatment. By the way, he was at once given an appointment for an X-Ray examination.

In January 1945 he appeared because of warts, and because of this small blemish a German doctor referred him to a skin specialist for electrical treatments. Finally he showed up as late as March 1945, at a time when one certainly had other worries because of the imminent end of the war, to have three warts treated.

(Affidavit Baldus, Doc. Jahnke 59, Exh. 57, Book 3, Pages 58/9, 63/4).

This behaviour of the affiant contradicts him clearly and obviously. I believe that a witness, who tells such obvious lies, can not be given credence in other matters either.

III. Auschwitz, Gassing and Human Experiments.

With the subjects Concentration Camp Auschwitz, gassing, and human experiments my client had no connection whatsoever. I can deal shortly with these points of the Indictment.

a) TesA (Technical Committee) and Auschwitz.

The construction of the I.G. plant Auschwitz involved the carrying-out of a government order. (Affidavit Ambros, Exh. 1419, NI 9542, Book 72, German Page 81, English Page 47). The TesA therefore actually had no possibility to refuse the orders. In this case the TesA had actually become nothing more than the recipient of governmental orders.

(Jahnke Transcript, German Page 10098, English Pages 9961/2.) This tremendous building project with its army of engineers and chemists could of course not be directed from the offices of the TesA or the Teske at all. Under these circumstances it would be to stretch the bow of responsibility beyond the breaking point if one intended to hold the defendants responsible for the individual construction measures simply because of their membership in the TesA.

In the choice of Auschwitz as the location for the new plant coal, chalk and power were the deciding factors, but not the use of concentration camp prisoners. (Struss Transcript, German Page 4103, English Page 4076). As a matter of fact, Jahnke only understood Ambros' big basic speech about the Auschwitz Plant to signify, that the large workshops

existing at the Concentration Camp Auschwitz, and the prisoners employed there, were only to be employed to furnish important construction parts, such as windows, doors, lockers, etc., and not that the concentration camp prisoners were to work in the plant itself. (Jasene Transcript, German Pages 10097/8, English Page 9961).

The credit requests for barracks which were submitted to the ToA and Teko did not in any way indicate in the beginning that they were intended for concentration camp prisoners. This can be clearly seen from the still available requests. (Jasene Transcript, German Page 10098, English Page 9961). As a matter of fact, also the Camp Monowitz was originally built for the German Labor Service. (Jasene Transcript, German Page 8194, English Page 8118). Only in December 1942 was the first credit request submitted, showing that one of the camps was intended for concentration camp prisoners. For this request reads: "For the billeting of further non-resident workers, including the concentration camp prisoners, it is intended to extend the already planned Camps I to IV. Up to now credits for 2,000 men were requested. It is intended to create billets for 3,000 additional men....."

In reality a much greater number of concentration camp prisoners had been working in the plant for some time already, and so the barracks had been completed long before this credit request was made. (Jasene Transcript, German Pages 10098, 10102, English Pages 9961, 9966). This is a typical instance of the authorities giving an order, which had already been long ago carried out by the lower agencies, before it was even submitted to the ToA for approval. Here the ToA had become a mere recipient of orders, and thus its post festum approval had only a formal meaning.

b) Jachne's knowledge of the conditions at Auschwitz.

Jachne was three times at Auschwitz, the first time in October 1942 on the occasion of a conference of the Teks. These Teko conferences used to be held in various places so as to give the members the opportunity for technical inspections. Then, the meeting was held at Gliwits. Those who took part, made the rounds of the plant area for 1 to 2 hours. At that time there were no prisoners there (Jachne German transcript Page 10098, English transcript Pages 9962, 9966).

The second time Jachne was at Auschwitz in August 1943, in order to decide on an argument about the supply of current. He had only little time, settled quickly the matter, to be precise, in the administration building, and returned at once. This time too, he saw nothing of the prisoners in the Auschwitz plant. (Jachne German transcript P. 10099, English transcript P. 9962).

For the third and last time, Jachne was again at Auschwitz in April 1944 on the occasion of a Teko conference. This time, about half a day was reserved for an inspection of the plant with its up-to-date construction system. Jachne himself took advantage of the opportunity to stay with his son. (German transcript p. 10099, Engl. transcript P. 996 The impressions gathered by Jachne in this perfunctory inspection of that huge building site were quite naturally of a technical nature. (Jachne, Germ. transcript P. 10114, Engl. transcript P. 9979). As far as the looks and the treatment of the prisoners are concerned, Jachne can at best confirm the statements of the witness Biederkopf, who, as a member of the Teko took also part in the inspection, namely, that nothing conspicuous struck him as to the looks of the prisoners and that he did not notice any bad treatment of the prisoners. (Jachne, German transcr. P. 10099, 10114, 10116, Engl. transcr. p. 9962, 9961, 9980, Biederkopf, German transcr. p. 8230, Engl. transcr. p. 8157/58).

Other witnesses, too, confirmed this. (e.g., Krugmuhl, Dr. Zorn, Dr. Glessner, Dr. v. Lon, Dr. Haspku, Dr. Dostofisch 174, 172, 177, 256, 180 Exh. 138, 140, 143, 149, 150, book Dostofisch 8, P. 11: 16, 25, 53, 55). At the place of work of his son, he observed prisoners doing the same kind of work as the other workers were doing. (Jachno German transcr. P. 10099 Engl. tra. p. 9962).

He never heard anything about bad treatment of prisoners from his son (Jachno German transcr. pp. 10100, 10133, 10134, 10136, 10137, Engl. transcr. pp. 9964, 997/8, 1000).

In this connection, it may be pointed to the fact that Jachno's son, Herbert Jachno, supplemented and corrected the affidavit he had made before the interrogator, Exh. 2059 (NI 12002), by his affidavit of 8 November 1947 (Exh. Duerrfeld supplementary document Duerrfeld 806). In any case, Herbert Jachno saw to it that the prisoners working in his shop were treated decently and that the punishment of the sweater (Stokbucker), when it had once been applied by the SS against a prisoner employed with him, was discontinued on account of his complaints. (Exh. 2059, NI 12002, par. 5). But what matters here, is not what Herbert Jachno saw at Auschwitz, but rather what he told about it to his father. To this point the Prosecution has failed to present any evidence, and Jachno himself has testified in a credible way that he was only told by his son that the prisoners were better off than in the camp.

Jachno never was in the labor camp Morowitz of the Auschwitz concentration camp. (Jachno Germ. transcr. p. 10099, 10100, Engl. transcr. Pp. 9962/4).

c) Jachne's knowledge of the gasings.

In the course of his first examination by the interrogator Jachne stated that in April 1944 he heard rumors of gasings at Auschwitz during a journey to Auschwitz. (Jachne German transcr. P. 10100, Engl. transcr. p. 9964). Subsequently, he questioned his son about that rumor in private. This latter reassured him, telling him that all sorts of rumors were sometimes being spread at Auschwitz, but that nobody knew anything definite. (Jachne German transcr. p. 10100, Engl. transcr. p. 9964). This tallies exactly with the testimony of the witness Dr. Huerch. (Huerch, Ger transcr. pp. 14667, 14674, Engl. transcr. pp. 14328/9, 14328/7). According to the Prosecution affidavit, Norbert Jachne learned himself some definite things about the gasings as late as a few months before the evacuation of the plant, in November 1944. (Affidavit Norbert Jachne, Exh. 2059, NI 12002, par. 8). This was at a time when his link with his father had already been cut off as a consequence of the war events. Jachne asked also Professor Leutenschlaeger, whether he had heard anything about it. But this man too denied it. (Jachne, German transcr. p. 10100, Engl. transcr. p. 9964). Thus, Jachne could not help taking the allegations concerning the gasings, which at that time most of the Germans with normal sentiments would probably have rejected as preposterous and as "enemy propaganda" (Perry Broad, German transcr. P. 5538, Engl. transcr. 6603, Huerch Ger. transcr. pp. 14663, 74, Engl. transcr. 14328/43), as mere rumors. (Jachne German transcr. p. 10100, Engl. transcr. p. 9964).

In view of the most subtle system of secrecy and camouflage prevailing then, of which the SS was a past master, it is not surprising that nothing transpired to the public of what was going on (Affidavit Dr. Horgan, Meine and Kuchne, Doc. Hoerlein, 92, 90, 91, Exh. 86, 84, 85, Book Hoerlein, 3, pp. 52, 48, 50).

In spite of the most careful examination of all the allegations made by the Prosecution and of all the documents submitted by them, the Defense have not been able to ascertain any charges against Jaehne others than I have dealt with. In conclusion, it is fair to say that the allegations made by the Prosecution against Jaehne are very weak. They are either recognizable as non-conclusive from the outset, or, their lack of conclusiveness appears as soon as a short elucidation of the connections is presented. In spite of this, the Defense have tried to help the finding of the truth by presenting detailed and positive material. The Defense are of the opinion that the picture that emerged of Jaehne is that of a technical expert, who in a difficult period did just the same things as any other technician in any other country would have done. Not the slightest indication of guilt for any criminal offence has resulted.

TRIAL BRIEF JAHNS

CERTIFICATE OF TRANSLATION

15 June 1948

We, Harry Ed. Gleichman, AGO No. A-443029, Adolph Lusthaus, AGO No. B 398010, Robert Hoffmann, AGO No. 20162, John B. Robinson, AGO No. X-046350, Joseph E. Goesser, AGO No. B 397933, Fred Salomon, AGO No. A-446622, hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of the Trial Brief Jahns.

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CLOSING BRIEF KUNIBAYASHI
(BETHUSH)

Case 6
Defense

CLOSING BRIEF

of the Defense Counsels

Horst PELCHMANN and Friedrich SILCHER

for the Defendant Dr. August von KERNER

in the case:

United States of America

versus

Carl KRAUCH et al. (case VI)

before the Military Tribunal No. VI

Nuremberg, Germany.

(corrected copy)

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Part I

General Matters

A. Activity During World War I

The Defense fails to see the importance of this point, concerning which the Prosecution questioned Herr von KRIEGER (v.K.) during cross-examination. For this reason the Defense did not enter into this matter neither in the re-direct examination of v.K. Since the Defense cannot comprehend even today what importance is to be attached to the absolutely subordinate position and activity held and exercised during World War I by v.K. who was not yet thirty at that time, it abstains from treating this point also here.

B. Relationship to the NSDAP.

The fact that v.K. did not have any closer connection with the NSDAP and the National Socialist regime and kept aloof from it as far as this was possible at all in Germany for a man in his position, is so obvious that the Defense can dispense with producing material in proof thereof, or embarking now in prolonged elaboration on this subject.

Of all the defendants v.K. was the last to join the NSDAP, namely not until 1942, and he did it for the reason usual in Germany

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in such cases, to be able to continue his work and tasks, undisturbed and without avoidable difficulties. He believes to have exerted some good influence in his special field in many respects. He always remained an ordinary member and never held any office or rank. V.K. did not come in closer contact with any of the prominent Nazis: ^{only} ~~he~~ FRANK in former days occasionally in connection with professional-legal matters, and once LEY. In proof of all that: Chart Proc.Edh.769, Vol.11 E.p., 203; Affidavit v.K. Proc. Edh. 299 EI 7020 Vol.11, G.p. 138; and Proc.Edh.1617 EI 11508 Vol. 65, G.p.16; Statement v.K. record G.pp.6560 and ~~6561~~ ⁶⁷¹⁷, E.pp.6499 and 6693/4.

For did v.K. derive any profit from the National Socialist regime; throughout the Nazi era his income was lower than it had been prior to that time. In proof thereof: Affidavit DITSCHER, v.K. Edh.6, Doc.Edh.6, Vol.1, p.60 (the amounts mentioned therein are gross income before deduction of the very high taxes). Statement v.K. record G.p.6551, E.p.6500. The witness KASTL, during cross-examination by the Prosecution, likewise testified that on the strength of numerous political conversations with v.K. after 1933, he considered it impossible that v.K. had had party-political relations with Nazi leaders; record G.pp. 5786/87, E.p.5787. For has the Prosecution produced any material to show that v.K. had any closer connection with the NSDAP or

its ideology, nor did it touch upon that aspect during the cross-examination.

C. Position in Economy.

Apart from the question whether the position as a member of the I.G. Vorstand had to be regarded in itself as an important function in the German economic life, it cannot be said that v.K. held a generally prominent or high position within the German economy. He exercised no function whatever in the Reich Economic Chamber, and neither in the Reich Group Industry - whose president he has not even seen once! - nor in the Economic Group Chemistry was he a member of the executive committee (Præsidium, Advisory Council, etc.). He was a pronounced expert in some fields dealing with economic-legal matters and as such he was a member of several special committees dealing with corporate law, taxation law, patent law and cartel law. On these subjects v.K. was an international authority. It is remarkable that outside the I.G. he did not hold any administrative positions (for instance, in supervisory boards) with German industrial enterprises. In proof of all that and details: Survey v.K. Proc.Edh.1617 UI-11508, Vol.66, G.p.16; Statement v.K. record G.p.6549, E.p.6498.

V.K. was not a War Economic Leader, a fact which no doubt is exceptional for a member of the IG Vorstand; cf. Statement v.K. record G.p.6549, E.p.6498;

and JAZZ record G.p.10033, E.pp.9899/900: "...that title which was awarded to nearly every leading man in industry at that time."

as for v.E.'s membership in the Arbeitsgemeinschaft fuer gewerblichen Rechtsschutz und Urheberrecht (Committee for legal protection of trade and patent rights) and in the Ausschuss fuer das Recht des geistigen Schaffens (committee for the right of intellectual production), of which he was chairman, compare Affidavit WISER von FILSCE, v.E.Exh.34, Doc.No.35, Vol.4, p. 252, in particular page 255; Statement v.K. record G.p.6550, E.p.6499, and the explanations given when Ex.No.30, record G.p.6719, E.p.6595, was introduced.

In view of v.K.'s personality, such as it became apparent when he was questioned as a witness on the stand, and such as it is shown by the entire documentary material produced by Prosecution and Defense Counsel, the Defense has dispensed with submitting general material concerning v.K.'s personality and character, the more so since, in its opinion, the point here is not to deliver judgment as to moral value or to conduct denazification proceedings, but to plead in defense against criminal charges. But since in the course of the proceedings, without v.K.'s or his defense counsel's solicitation, an unasked-for statement by Dr. Louis LUSKY was received, a statement which mentions in a general way also v.K.'s personality, let us refer to that letter dated 26 August 1947: v.K.Exh.14, Doc.No.15, Vol.3, p.135: "...you are a man of the highest probity."

... your position was based not on a belief in the totalitarian principles of the Nazi Government but on an enlightened legal philosophy fully consistent with the best traditions of the Anglo-American Bar. As I recall, you were a member of the Nazi-Party; but it is my personal opinion, based on my careful observation of you during the above mentioned association, that you did not subscribe to its doctrines. ... It may also be appropriate to state that I have written this letter without any solicitation by you or on your behalf."

D. Organisation of the legal system and position in the I.G.

I. The key to comprehension and correct judgment of the participation of v.K. in the counts of the indictment, is the organisation of the legal system in the I.G. the position and the field of activity of v.K. and the working procedure of the Vorstand. The last point will be dealt with separately because of its general significance for all accused members of the Vorstand; on the basis of an agreement of the defense counsels, this problem will be dealt with as a general subject, the defense of von KERNER taking the lead. The organisation of the legal system will be dealt with in the following.

II. The Legal System of the I.G. were decentralized. Only thus could it function in view of the decentralized direction of the business affairs of the I.G. and because of the necessary technical understanding of the

affairs to be dealt with legally; in view of the character of the I.G. business, these were extraordinarily varied and many fold and demanded special knowledge. This decentralization of legal matters was also a result of the historical development.

In connection with the various ~~works~~ ^{works} and sales combines a number of independent legal departments had been set up. These legal departments worked independently in their respective field of activity and carried their own responsibility. For this reason it was by no means the case that each legal matter in the I.G. came to the attention of v.K. and even if a legal affair came to his knowledge, for instance in the Vorstand, it did not mean that he had to examine it on a legal basis, but the point in question was, whether it belonged to his field of activity or not. Nor did v.K. have to supervise continuously the various legal departments and their members. He only shared the responsibility with others for assigning the right people to the legal departments in accordance with the principles adhered to and tested in I.G. that the right selection of personnel was of greater value than a technical supervision, which after all could not embrace all details: men not measures. The heads of the legal departments were subordinated - insofar as they themselves were not members of the Vorstand - to the Chief of the respective ~~works~~ ^{works} - and/or sales combines. Proof for all this and details:

general affidavit BREIDEL, v.K. Exh. 1, Doc.No. 1, Book 1, page 1, and in respect to the legal department Farben in Frankfurt as a typical example: affidavit KUEPPER v.K. Exh. 2, Doc.No. 2, Book 1, page 6; statement of v.K., transcript, German page 6538 to 6540, 6547, Engl.page 6485-6487, 6496. Compare also following Documents and statements: Affidavit TER MEER, Prosecution Exh. 333, NI-5186, Book 12, German page 95 (96): The legal departments were part of the organization of the individual plants. Affidavit SCHNEIDER, Prosec. Exh. 1333, NI-6847, Vol. 69, German page 4 (5) and Affidavit BUETEFISCH, Pros. Exh. 1334, NI-6220, Book ~~11~~⁶⁸ German page 11 (12): the legal department Louisa was under the direct supervision of SCHNEIDER, was directly responsible to him, worked according to his instructions and kept him informed of its activity. Statement KUENNE, transcript German page 10225, Engl.page 10087, about the functions of BRUEGGELMANN as legal advisor of the ~~work~~^{work}-combine Niederrhein and the sales-combine BAYER.

In two points only was the legal system unified: legal committee and central ~~department of~~^{Department of} contracts. With regard to these two points unification was absolutely essential for technical reasons and they constituted the necessary minimum of centralization. Cf. statement v.K., transcript, German page 6547, Engl.page 6495/6. The unification in these two points emphasizes, by the very fact that the unification was kept at a minimum, the decentralization, independence and self-responsibility of the individual legal departments.

- 2) The legal committee consisted of the chiefs of the legal departments and a few more lawyers, altogether the important I.G. lawyers. This committee met at greater intervals, not regularly, by special invitation. As a rule once or twice a year; during ~~the~~^{the years} 1933-1945 altogether 16 meetings were called. Cf. Affidavit DITSCHEL, v.K. Sch. 3, Doc.No. 3, Vol. 1, page 11. The legal committee served the purpose to keep the I.G. lawyers who were stationed all over Germany, in personal contact and to make possible an exchange of ideas and experiences between them and mutual information about problems of general interest. Now and then a uniform line for the treatment of certain problems had to be discussed. It was also of importance that special knowledge of some of the members were brought up during the discussions, to which the others could refer to when the occasion arose.

On the other hand it was not the duty of the legal committee to supervise the activity of the individual legal departments, to make decisions in practical concrete questions ~~or to make any~~^{to commit to individual} binding decisions at all; it had no office, no secretary, no letterhead and did not write or receive letters. As evidence for all these details:

Affidavit BREDEL, v.K., Exh. 1, Doc. No. 1, Vol 1, page 1 (2,3),

Affidavit ter MEER, Prosecution Exh. 334 NI-5187, Volume 12, German page 107 (139/40), Deposition v.K. Record, German page 6541/42, English page 6490/91, Deposition KUEFFER, Record German page 2944/45, English page 2924-26. That the Legal Committee did not have to approve any contracts is evident from the very introduction of the minutes of the Legal Committee of 15 November 1938, Prosecution Exhibit 1872 NI-14024: "v.K., in his introductory remarks, states.....that it.....was not possible to in-criminate the Legal Committee with the responsibility for contracts to be made by the IG, and that such responsibility should rather be assumed by the department handling the particular case."

(Presented in v.K.'s cross-examination by the Prosecution; the complete minutes have been filed with the Secretary General as a document and the German excerpt presented to the Defense contains the introductory paragraph quoted here, while in the English translation this introductory paragraph is missing so far; however, steps have been taken to correct this.)

The agenda of the meetings of the Legal Committee since 1933 afford an authentic, complete and good survey on the matters the Legal Committee dealt with, cf. enclosure 2, relative to affidavit DIECHER v.K. Exh. 3 Doc. No. 3, Vol. 1 P. 11 (13 and other pages).

Having regard to the proceedings in course, the essential result of this inquiry is, in particular, that the fact of a question having been discussed in the Legal Committee does not imply

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detailed knowledge of the matter concerned on the part of the other participants including the chairman v.K., and does not establish any responsibility. Even if questions of general interest and a desirable uniform procedure were involved, it was by no means the business of the Legal Committee or of v.K. from then on to take care that in the future a uniform procedure would be adhered to in current work of the individual legal departments or to attend in the future to all matters of this kind; competence and responsibility remained decentralized with the legal department involved. A suitable case in point is the report on the legal position of the occupied territories in the meeting of the Legal Committee of 2 October 1940; in this connection compare disposition v.K., Record German, pages 6822-24, English page 6702-04.

- 3) The Central Office for Contracts served the purpose of avoiding collisions in the making of contracts. The danger of collisions resulted from the fact that although the contracts were worked out in detail and concluded independently by the individual legal departments they bound the company as a whole. The existence and the necessity of the Central Office for Contracts emphasize the decentralization and independence of the individual legal departments: Had all the contracts of the IG been subjected to a final legal examination by one agency (which would have been an impracticable arrangement!) then that particular agency would have known, and been able to check on, all obligations. In that case collisions might have been avoided there

and the setting up of a central office for the special purpose of checking on possible collisions could have been dispensed with.

The tasks of the Central Office for Contracts - to which only those contracts were transmitted where there existed a danger of collision - were restricted to checking on possible collisions and the registration of all such contracts required for this purpose. As regards the technical procedure of the check-up on collisions reference is made to the exhibits quoted below.

It was definitely routine work. While it is true that the Central Office for Contracts was attached to the R. L. v. K. was not concerned with the current work, let alone responsible for the contracts. This check-up on possible collisions by the Central Office for Contracts, therefore, did not by any means afford him knowledge of all contracts, and if in exceptional cases he concerned himself for once with an incoming contract, he did so, naturally, with a view to checking on possible collisions. Even when contracts transmitted to the Central Office for Contracts for checking on possible collisions passed v. K.'s desk, it did not necessarily mean that v. K. thereby obtained knowledge of such contracts. It is a matter of course and a common experience in every-day life that very busy people in high positions have a lot of incoming mail of all kinds which they do not read and attend to themselves, and which though addressed to them is not intended for that purpose; compare moreover affidavit DITCHER, v. K. Exh. 28, Doc. No. 30, Vol. 5, page 281.

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The very fact that there was such a huge number of contracts made it impossible for v.K. to know all of them. As time went on, the Central Office for Contracts handled approximately 2600 contracts. In this connection and regarding the tasks of the Central Office for Contracts in general compare affidavit PRATJE v.K. Exh. 4, Doc. No. 4, Vol. 1, page 25.

Proof of the foregoing account, in general and in detail, affidavit BREDEL v.K. Exh. 1, Doc. No. 1, Vol. 1, page 1 (3); deposition v.K. Record German page 6542/44 and 6760/67, English page 6490,92 and 6637/44 and deposition JAHLE, Record German page 1/112/13, English page 9977/78.

Secret contracts covering installations of the military economy, that is, the very contracts which were connected with Germany's rearmament, were sent neither to the Central Office for Contracts nor to v.K. prior to 1941, but to the member of the Vorstand Dr. BUEL, the chief of the Legal Department for Chemicals in Frankfurt.

Proof affidavit SILCHER v.K. Exh. 30, Doc. No. 32, Vol. 5, page 286; deposition v.K. Record German page 6765/67, English page 6642/44.

It was just in the case of the contracts connected with German rearmament, the only ones on which the Prosecution can base its charges, if it wants to maintain at all that contracts imply a knowledge of the preparations for aggressive war, that there was no possibility - such as it existed at least theoretically in the case of other contracts -, of v.K. having obtained knowledge of them on the occasion of the check for possible collisions by the Central Office for Contracts.

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The resulting facts which are of importance for the pending trial are that von KNIERIEM did not get any knowledge of contracts, with which he usually did not deal, on the basis of the investigation as to collisions by the ZfV (Central ~~Office~~ ^{Office} for Contracts), let alone that he could be held responsible for such contracts or for the matters treated by such contracts.

- 4) Summarizing I want to say: Even if such an organization of the legal system should be censured contrary to expectancy, von KNIERIEM had to adhere to it, and he did adhere to it in fulfillment of his duties. This organization of the legal system, such as it was, was, however, the only correct and possible one. (see statement v. KNIERIEM, German Transcript p. 6547, Engl. Tr. p. 6496).

III. Position in the I.G.

1) von KNIERIEM was a member of the Vorstand from 1925 and a member of the Central Committee since 1938. It has been left an open question whether he had been a member of the Working Committee, dissolved in 1938, which up to then exercised the actual functions of a Vorstand. With regard to this point, the Prosecution has not produced the evidence which it was its duty to produce (survey of the positions of von KNIERIEM, Prosecution Exh. 1617, HI-11, 508, Book 66, German Tr. page 16, and affidavit BAESSLER, German Transcript p. 2066/68, Engl. Tr. p. 2076/79.)

On the basis of the presentation of evidence by both parties, both parties concur as to the fact that the importance of the Central Committee dwindled from 1935 onwards and was actually restricted to certain special questions only.

(Preliminary Memorandum Brief of the Prosecution, Part VI, Germ. p. 3/4, Engl. p. 3/4; Affidavit TER MEER, Prosecution Exh. 330, NI-5184, Book 12, Germ. p. 75 (78); Affidavit TER MEER, Prosecution Exh. 334, NI-5187, Book 12, Germ. p. 107 (135). It is significant among other things that no minutes of the meetings of the Central Committee were kept from 1937 onward. (Affidavit BLESSLER, Record Germ. p. 2057, Engl. p. 2068). Any other regulation under which the Central Committee would have enjoyed greater powers and responsibilities would have been incompatible with the German Stock Laws of 1937 (Expert opinion SCHMIDT, Defense Exh. No. 280, von KNIFRIEM Document 39, Supplementary Book page 1 (6).

Beginning 1938, after Professor SELCKE was pensioned - up to that date this question must be considered undecided - von KNIFRIEM was ^{solely regarded as} the first lawyer of the I.G. It would be wrong, however, to consider him as a Counsel General (Affidavit KUERTER, von KNIFRIEM Exh. 2, Doc. No. 2, Book 1, p. 6 (8); statement von KNIFRIEM, Record, Germ. p. 6544/45, Engl. p. 6492/94, in particular see the opinion of the Assistant Attorney General, New York, as of 1945, stated there.) von KNIFRIEM must not at all be considered responsible for all legal matters within the entire sphere of the Vorstand. He had his own large strictly defined and limited field of work, namely:

- a) Matters of Corporation Law, such as statutes, preparations of the ^{shareholder} meetings and the decisions of the same, changes in the capital stock, loans,

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balancing of accounts at the end of the year, basic questions of Tax Laws;

- b) the structure of the Konzern with respect to ^{legal and} ~~business~~ ^{and} (within the sphere as set forth in points 2 and 2) ~~and~~ close relations to the legal department in Berlin, NW 7):
- c) patent matters;
- d) the direction of the legal department in Ludwigshafen, the dealing with some matters of this department, as for instance the contractual relations with the Standard oil (N.J.); in proportion to his ever increasing occupation with general matters of his field of work as in a) to c), von KNIERIEM had less and less time for dealing with this part of his field of work, as time went on.

(Statement von KNIERIEM, Record, Germ. p. 6539/40, 6544/46, Engl. p. 6486/88, 6492/95; Affidavit DITSCHER, von KNIERIEM Exh. 3, Doc. No. 3, Book 1, p. 11 (13 ff) with von KNIERIEM's functions in the legal committee; Affidavit BRENDEN, von KNIERIEM Exh. 1, Doc. No. 1, Book 1, p. 1 (3), as to the closer relations to the legal department Berlin NW 7 with respect to his field of work as in a) and b), also see statement FRANK-PAHLE, Record, Germ. p. 9920, Engl. p. 9789). These statements are corroborated and to the very great extent and the very great importance of this entire working field becomes obvious on the basis of the ^{matters brought up by} ~~minutes~~ KNIERIEM in the legal committee as set forth in the afore-mentioned affidavit of DITSCHER, but above all from the excerpts of the minutes of the meetings of the Vorstand

between 1933 and 1944 (enclosure to affidavit SILCHER, von KNIERIEM Exh. 5, Doc. No. 5, Book 1, p. 27 (30 ff); as to the patents, in particular on the basis of the statistics on patents, von KNIERIEM Exh. 7, Doc. No. 7, Book 1, p. 62 ff and of affidavit REINDEL with a list of patents applied for, von KNIERIEM Exh. 8, Doc. No. 8, Book 1, p. 66.

In this way, which is obvious from this evidence, the working field of KNIERIEM was limited with respect to his relations with the other members of the Vorstand as well as also within the legal field. As far as it was a matter of working fields other than that of KNIERIEM's, the other members of the Vorstand had at their disposal for legal advice and cooperation the lawyers of the respective legal departments; see the description of the legal system in D II 1, p. 8/10. In this connection it was of no importance whether the head of the respective legal department was a member of the Vorstand himself or not. As far as a homogeneous line in the treatment of certain legal questions within the I.G. seemed expedient, this could be attained by the discussions in the legal committee (see its description in D II 2, p. 11/13.) As far as agreements were discussed or mentioned in the Vorstand, the presentation of the matter concerned was made by the member competent in the respective field, and not at all by von KNIERIEM, except, of course, when it was a matter of his own special working field (affidavit REINDEL, Exh. 1 Doc. No. 1, Book 1, p. 1 (4), testimony HANN, Record, Germ. p. 10 723, Engl. p. 10 562/83.) In particular, von KNIERIEM did not have to attend to every legal question which was mentioned in the Vorstand.

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Several more lawyers were members of the Vorstand (Aff. HUEPPER, Exh. 2, Doc. No. 2, Book 1, page 6 (8)): HEUBEGEMANN, until 1940 HUE, until 1938 SELCK; in addition von SCHNITZER had a complete legal education (Aff. HUGLER, Pros. Exh. 320 NL-5069, Book 11, page 235; Aff. von SCHNITZLER, Pros. Exh. 319, NL-5199, Book 11, page 222).

v.K. did not have to supervise continuously the activity of the legal departments, see description of the legal system in D II, 1, page 9. For a limited uniformity, as far as such seemed advisable, provisions were made in discussions by the legal committee see D II 2, page 11/13. Added to this was the function of selecting suitable personnel; as has already been stated on page 9, D II 1, description of the legal system, and is repeated here because of its particular importance, v.KNIEPRIM had to share the responsibility for placing the right personnel in the legal departments.

Through these two factors - working in the legal committee and placing good personnel in the legal departments - v.K. gained at the same time sufficient and complete information of his Vorstand-colleagues with regard to legal problems which are of interest and importance to all concerned. Since such problems were dealt with by the legal committee, partly with the direct assistance of v.K., partly on the basis of reports of highly qualified lawyers who had been chosen by him,

and since, furthermore, the other members of the legal committee, in which each legal department was at least represented by its Chief, and sometimes by a few more lawyers, were also highly qualified lawyers, v.K. had time taken care of and could be certain that in the future the problem in question would be dealt with by all legal departments in a reliable and correct manner and that by this means his colleagues in the Vorstand would have the best legal advice and assistance.

A good example in this respect is the case of the treatment of the legal positions of the occupied territories in the meeting of the legal committees of 2 October 1940. Agenda of this meeting in Aff. DITSCHEK, v.K. Bd. 3, Doc. 10, 3 Box 1, page 11 (id); Process, Exh. 1875, HL-8454, introduced during cross examination of v.K.; Statement KUEPPER, Transcript German page 2541/42, English page 3923/23; statement v.K. Transcript German page 652/24, English page 6702/04; the problems had arisen in the legal department Ludwigshafen, v.K. realized the general importance of this problem and had a pertinent report made by the Specialist on the problem in question in the following meeting of the legal committee. The guiding principle was that the other legal departments should deal with those problems, if they occurred, as carefully, thoroughly and correctly as had been done by the legal department in Ludwigshafen.

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Moreover, after this discussion in the legal committee, it could be completely relied upon that the treatment of such problems would be carried out just as correctly by the other legal departments. Just through this method, the only possibility in such a large and extensive enterprise, working in such decentralized manner and with regard to the other lawyers of the IG, who were likewise highly qualified in every respect, the following ends were achieved: despite the decentralization and despite the independence of the individual legal departments, all members of the Vorstand had the best possible and, within reasonable limits, also uniform legal advice and cooperation in their respective fields of activity. In this connection it must also be pointed out that, with regard to the treatment of the matters in question by the legal department Ludwigshafen, where work originated for the report and the discussion in the legal committee, the Prosecution itself has not pressed any charges.

To be First Lawyer did not signify a formal title and special position (statement v.K. transcript German page 6544, English page 6492/93.) Theoretically and with the same distribution of the spheres of activity, it could also have been another lawyer, for instance, the chief of the legal department Leverkusen. v. KNIERIM was not appointed formally to the position of First Lawyer nor was this position explicitly

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established. He was just generally recognized as such and this on the basis of a combination of various factors ^{his working field comprising} the fundamental questions of corporate law, and the structure of the concern, as to law and taxes, the chairmanship of the legal committee, patent matters and the membership in the Vorstand and the central committee (statement v.K., transcript German page 6544, English page 6492/93, Aff.KUEPPER, v.K. Exh.3, Doc.No.1, Book 1 page 6 (8-9)).

- 2) Competence and responsibility of v.K. moreover has been discussed in his direct examination (statement v.K. German transcript, page 6546/47, English page 6496/97 Aff. KUEPPER, v.K. Exh.2, Doc.No. 2 Book 1, page 6 (9)).

The question, whether he could be considered as "General Director" within the AG was answered, under oath in the negative by her Moor with regard to v.K. during the cross-examination by the Prosecution, German transcript page 7302, English page 7242.

- 3) The legal department had definitely nothing whatever to do with questions of labor conditions, this on the contrary, this was the task of the social and personnel departments; for the legal department Ludwigshafen Aff. HORNIG, Exh.1, Doc. No.1, page 1 (4), for the legal department Farben Frankfurt Aff. KUEPPER, Exh.2, Doc. No.2, Book 1, page 6; organizational chart of the plant Ludwigshafen WULSTER Exh.2, Doc.No.3, Book 1, page 25; statement LANG, German transcript page 8673, English page 8592.

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The social welfare department Ludwigshafen had in charge a first-rate expert - a full-fledged lawyer (attorney) and an outstanding authority on labor law (testimony TER MEER, record German page 7186, English page 7132, testimony REISS, record German page 7685, English page 7617).

As a matter of principle the ^{legal} committee ~~did not deal with problems of labor allocation either~~ did not deal with problems of labor allocation either (affidavit BRENDL, exhibit 1, Doc. No. 1, volume 1, page 1 (4); testimony von KNIEREM, record German page 6542, English page 6490/91).

- 4) Von KNIEREM attended the sessions of the TEA only as a guest from about 1939/40 on, because matters relating to patents and licenses were often dealt with in the TEA (testimony von KNIEREM, record German page 6543, English page 6496; testimony TER MEER, record German page 6903, English page 6777; testimony STRUSS, record German page 4097/99, English page 4071/72). Normally von KNIEREM attended the sessions only intermittently during the introductory scientific talk and during the treatment of patent and license matters; the record, containing a list of attendance, is not authoritative to that extent (testimony STRUSS, record German page 4098/99, English page 4072), compare also testimony KUEFLIGER concerning a similar case of erroneous list of attendance in a record concerning Privy Councillor SCHITZ and, in connection with it, statement by Dr. DIK, record German page 9309/10, English page 9205. Even when von KNIEREM, who had no expert knowledge of technical matters and who was only moderately interested in the TEA-meetings in questions outside his scope, did attend the TEA sessions,

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the treatment of matters there as well as the existing charts offered only an extremely limited source of information (testimony STRUSS, record German page 4093/27, English page 4068/71; affidavit STRUSS, Prosecution exhibit 391 NI-9487, volume 15, German page 71 (138)).

- 5) At times von KNIERIEM took part in the sessions of the ~~En~~ because of individual points, but, as a rule here too, he did so only intermittently (testimony v.K., record German page 6548, English page 6497, affidavit FRANK-PAHLE Prosecution exh. 360 NI-5169, volume 13, page 142 (149)).

- 6) Von KNIERIEM had nothing to do with the plant ^{leaders} ~~management~~ (Betriebsführer) conferences and with the advisory council for the enterprise (Unternehmensbeirat). He never participated in sessions, did not receive any records and never concerned himself with questions of this nature (testimony v.K. record German page 6548, English page 6497). The Prosecution neither submitted nor contended anything to the contrary.

- 7) The essential result of the foregoing evaluation of evidence relevant to these proceedings is as follows: v.K. had a large and prominent sphere of work of central importance, which occupied him to the fullest. As regards the major part of this sphere of work, the Prosecution levels no charges, and therefore von KNIERIEM, in spite of his extensive sphere of work, is named relatively rarely. In most of the affairs dealt with by von KNIERIEM the Prosecution itself does not see anything objectionable. All in all, in view of the evidence from both sides

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there is nothing unclear or incomprehensible about von KNIEREM's entire role in the I.G.

The legal system, like the business activity of the I.G. itself, was decentralized. von KNIEREM was first lawyer. There existed a well-organized and smoothly functioning system which ensured the completely adequate participation of lawyers and the consultation and information concerning legal matters for all Vorstand members; careful selection of lawyers, and furthermore the treatment of generally important problems in the legal committee.

Von KNIEREM always has been convinced - and he holds this view with more certainty today than ever before - that the leading men of the I.G. conducted themselves impeccably and did not commit any punishable acts. But even though the court might arrive at a different judgment, von KNIEREM can be held legally responsible only in so much as he himself actually dealt with or ~~participated~~ in the matters concerned.

E. Duration of custody.

For the sake of completeness may I state here that von KNIEREM has been in custody continuously since 7 April 1945.

Part II

Count I

(Answer to Preliminary Memorandum Brief of the Prosecution: Part I
" Planning, Preparation, Beginning and Conduct of Aggressive Wars and
Invasions of other Countries "; Sub-Section IV. Participation of the
Defendants).

A: Financial Support of Hitler and the NSDAP, pp.14- German and English
text -of the Prosecution Brief).

Subject: The RM 400,000.- Subscription by von SCHNITZLER at the meeting
with GOERING on 20 February 1933, in the course of which HITLER delivered
a speech.

The Prosecution has failed to prove its contention (see Trial
Brief p.14) and arguments presented by the Prosecution on 27 August 1947,
German record pp.72 and 75, Engl.record pp.74-76) that von SCHNITZLER had
subscribed " on behalf of the I.G.", that he had informed the other I.G.
directors of what he had heard, and that " the defendants " had thus given
their support:

Testimony of von KERNER, record G.p.6558, E.p.6503, dated 6 February
1948; GALESKY, G.p. 6265, E.p. 8195, dated 2 March 1948.

The documents in Book 3 of the Prosecution do not prove any know-
ledge on the part of KERNER.

The 100,000.- RM gift to the SS likewise was made without von
KERNER's knowledge; in particular Dr. SCHNITZ did not discuss the
matter with him:

Testimony von KERNER, record G.p.6569, E.pp. 6506/9, dated 6 February
1948; and record G.p. 6743, E.pp.6624/25, dated 9 February 1948 (cross-
examination;

Testimony HOERLEIN, record G.pp.6265/66, E.pp.6207-6210, dated 2 February
1948;

Testimony KUEHN, record G.pp.10257/58, E.pp.10121/22, dated 30 March
1948;

Testimony ter HEE, record G.p.6897, E.p.6771, dated 11 February;

Testimony GAJESEY, record G.p.8270, E.p. 8196, dated 2 March.

As for the gift of RM 100,000.- made on 22 September 1938 for the Sudeten German Free Corps (Pros. Doc. Book 46, Edn. 834d, record G.p. 6747, E.p. 6626, dated 9 February 1948), no proof has been furnished that this gift was previously approved of by the Central Committee and thus also by von KNIEPME. Page 4 of the document, that in the letter of the Central Committee office dated 22 September 1938, which according to the distribution roster was sent also to von KNIEPME, only proves that the office of the Central Committee issued a report about this payment, which was made at the instigation of Generalrat SCHMITZ; compare

Statement von KNIEPME;	record dated 9 Febr. '48	G.pp.6747/48;
		E.pp.6624/25;
" HORNSEN, "	" 2 "	48 G.pp.6264/65;
		E.pp.6207/8;
" Ter MEER "	" 11 "	48 G.pp.6897-6900;
		E.pp.6771-6774;
" GAJESEY "	" 2 March 48	G.p. 8268;
		E.pp.8195/6.

Also, a great many other gifts, for instance, the birthday present for GOERING, etc., were made without explicit authorization by the Central Committee or Vorstand, thus neither by KNIEPME, record dated 6 February 1948, G.p. 6559, E.p. 6509.

HORNSEN's testimony, record of 2 February 1948, G.p 6263-6271, E.pp.6207-6215, shows unequivocally just what absolutely unpolitical character these gifts had in their majority, that they were for the major part compulsory donations and that, after all, their total amount was not 40 millions, as the trial brief of the Prosecution on page 14 contents, but only RM 400,000.- annually for all the 20 I.G. plants altogether.

In view of a turnover of 1 to 3 billion Reichsmark a year, these sums cannot be regarded as a considerable financial support.

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They amount, in the years 1933 to 1944, to only -.42 to -.10 % (decreasing) of the sales (cf. Defense Basic Information Book II Exh. 176, Doc.No.4, and Exh. 177 Doc. No.5, and record dated 7 May 1948, G.pp. 14134-14136, E.pp.13809-13812).

B. Cooperation with the Wehrmacht.

(pp.15-16 (German and English) of the Prosecution brief).

The creation and activity of Vermittlungsstelle W (mediation agency) does not prove any intention or consciousness on the part of the defendants of aiding in the preparation of aggressive war; it was a subordinate agency and suggested itself for organizational reasons.

The attempt made by the Prosecution to represent von KNIERIM as the originator of Vermittlungsstelle W (cf. record G.p.6749, E.p. 6626, dated 9 February 1948) has failed. It had not alleged such a thing so far in its trial brief (p.15).

The chronological order of the documents submitted in this connection:
1) Pros. Exh. 101 Bohlk 6 dated 5 September 1935 - without any participation of von KNIERIM -; 2) Pros. Exh.1868 NI 14002 (dated 4 October 1935 and recording a discussion with Colonel THULES on 14 September 1935 in which also von KNIERIM took part); and 3) von KNIERIM Exh.9, Doc. B.II, p.89, Enclosure 6 (dated 18 October 1935) clearly shows that the decision of the Central Committee to establish Vermittlungsstelle W was made prior to 5 September 1935, that is at a time

when von KNIERIM did not yet even belong to the Central Committee, and that von KNIERIM's activity began only afterwards in connection with special problems of the Vermittlungsstelle; record of 6 February 1948, ^{L.p. 6617-6630} G.p. 6570, Z.p. 6520, G.pp. 6750-6752, and of 10 February 1948 G.pp. 6803-6805, Z.pp. 6661-6662.

If, according to Pros. Exh. 1868 [presented on 9 February 1948, record G.p. 6752, Z.p. 6628], in the course of the discussion between Colonel THOMAS and Dr. KRAUTH - Dr. von KNIERIM, the I.G. pointed on 17 September 1935 to the necessity of creating a central agency to make decisions in doubtful cases, to safeguard the over-all interests of home defense, this must not lead to the strange error, to which the Prosecution obviously has succumbed, namely, that the underlying idea was the creation of Vermittlungsstelle II. This is erroneous, for Vermittlungsstelle II had already been established, without von KNIERIM's assistance. The suggestions made by the I.G. in the course of this discussion pursued quite obviously the aim that the Wehrmacht (Army, Navy, Air Force) should create a central agency, instead of the many existing agencies of the three Wehrmacht branches, to which Vermittlungsstelle II which had been already established by the I.G. might turn.

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von KNIERIEM, according to his position in the legal system of the I.G., as set forth at the beginning, had dealings with Vermittlungsstelle # only in respect to two matters:

- 1) Treatment of the intended application for patents abroad and of the intended agreements with foreign countries;
- 2) occasionally, questions of giving away to foreign countries information pertaining to experiences (in particular know-how);

cf. Statement von KNIERIEM, record of 9 February 1948, G.p. 6754, S. pp. 6631-32.

This follows, undisputedly, also from von KNIERIEM's statement on the legal situation prevailing at that time, the tendency of the Government to render the law more severe, the resulting uneasiness of the production and business executives of the I.G. and the directives issued to counter the dangers. That is remarkable is the similar legal situation abroad and the fact that despite these difficulties it was possible to exchange experiences with foreign countries: compare

Statement von KNIERIEM of 6 February 1948, record G.p. 6563-6572
S. pp. 6521-6522

von KNIERIEM Exh. 9, Doc. B II (Affidavit HOLDEGANN)
von KNIERIEM Exh. 10 " " (Ministry of Justice) *Memorandum of the*
von KNIERIEM Exh. 11 " " (Memorandum of the I.G. = " *author von KNIERIEM - to the Reich Ministry of Justice.*
It proves with what energy the I.G. opposed the increasing of the severity of the articles of the German law concerning treason, suggested by the Reich Ministry of Justice - Exh. 10 -, because it would have endangered the exchange of experiences on the basis of international agreements).

von KNIERIEM Exh. 15 Doc. B III (proves that in 1935/36 the US Government issued a prohibition for "Standard" to convey a certain ~~information~~ procedure to the I.G.).
hydrogenation

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Statement for REER; record of 12 February 1948, G.p.6988, Z.pp.6918-
" CORR, record of 24 October 1947, G.pp.2683 and 2680/82,
Z.pp.2683, 2690/92
" VACHER, record of 9 September 1947, G.pp.585-591
Z.pp.615-621.

The statements made in the Prosecution Brief at the top of page 17, on secret reports in the fields of invention and research, which are said to have been sent to Herr von KNIERIEM (and to KRAUCH, for REER, GAJESKI and others), and on a report of KNIERIEM to most of the defendants (Prosecution Brief, at the bottom of page 98, top of page 99) are erroneous and not clear in their meaning. The quoted exhibits 165 NI 5694 Book VI, p.201, and 166 NI-4669 Book VII, pp. 1 - 19, date back to 4 May and 8 June 1939 and both of them deal with the question whether and how the I.G. is to be compensated for its development work and the inventions made in this process, if the orders have come from the Wehrmacht. Both documents speak for themselves. The first (Exh. 165 Book VI), in the form of a record, shows the treatment of the question in the Patent Committee, on which occasion von KNIERIEM, as a specialist in questions of patent law expresses his opinion on the legal situation, and a resolution is passed "that the Vermittlungsstelle is to be requested that it should currently make known to the patent divisions all the spheres in which cooperation with the Wehrmacht existed, and that all applications in these fields sent to the patent divisions are to be submitted to Vermittlungsstelle W". The second exhibit (166 Book VII) is that report of Vermittlungsstelle W to von KNIERIEM, the heads of the Sparten and the legal and patent divisions of the Plants, on the

"development and research work of the I.G. undertaken by order of the Wehrmacht or in collaboration with Wehrmacht agencies." The report deals only with legal questions and calculations and does not contain any statements whatever as to the specific nature of the Wehrmacht contracts on hand, what inventions were made and what patents applied for.

Thus von KNIERIM himself - in contrast to the allegations made in the Trial Brief - did not report anything at all, and that which was reported to him and others by the Vermittlungsstelle, referred exclusively to patent and legal questions.

The Prosecution, then, has failed to prove that von KNIERIM, in cooperation with Vermittlungsstelle 3, dealt with questions other than those of patent and contract law. Nor does Treas. Ex. 1869 NI 14022 prove anything else. The conference of the local committee of 30 September 1935 recorded therein dealt with economic espionage within the I.G. plants. This kind of economic espionage - industrial espionage, that is to say the activities on the part of private competition in the I.G. plants to obtain knowledge of production secrets and patents, was combated for decades by the I.G. on their own initiative - just as in any other industry. (Cf. detailed statement of von KUEHN on the stand, in connection with the name HERBECK which was also held against von KNIERIM during cross-examination, and KUEHN Exh. 51, Doc. 51 and record G, pp. 10276-78, E, pp. 10137-39). These measures have nothing to do with defense or counter-intelligence in the military sense. Nor was Vermittlungsstelle 3 mentioned in this connection during the discussion. These errors on the part of the Prosecution have been clarified by von KNIERIM's statement and the clear wording of the document: compare record

records dated 9 February 1948, German page 6754-6756, English page 6631-6632 and dated 10 February 1948, German page 6805-6807, English page 6683-6685).

There is no evidence of any activity on the part of KNIRIEM in connection with the so-called war delivery contracts (see Prosecution Brief, page 17 and 18).

The Exhibits 210-212, Volume 8 and Exhibits 266, Volume 9, quoted by the Prosecution, have no bearing whatever on Dr. von KNIRIEM.

Nor does Exhibit 1871 NI-14028 of the Prosecution prove any knowledge on the part of von KNIRIEM (compare cross-examination von KNIRIEM, record German page 6765-6767, English page 6643-44 dated 9 February 1948).

This document does not prove by any means that during the period of German re-armament, i.e. before the beginning of the war in 1939, so-called W-contracts, i.e. secret contracts concerning war production plants, reached Dr. von KNIRIEM personally or the central office for contracts and thus his desk (Exhibit 1870 - not in evidence - compare record dated 9 February 1948 German page 6762-6764, English page 6639-6641).

Rather, all these contracts, for reasons of secrecy, were sent to the chief of the legal division chemicals in Frankfurt, the Vorstand member Dr. BUEHL. Only after his death in November 1940, did Dr. von KNIRIEM take his place from the first half of 1941 on (compare von KNIRIEM Exhibit 30, Document No. 32, Volume 5, page 286-287),

(Prosecution Exhibit 1871, which becomes completely comprehensible only in conjunction with the text of von KNIRIEM Exhibit 29, Document 31, Volume 5, page 285).

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merely shows the manner in which the exigencies of secrecy clashed with those of contract examination and how it was sought to avoid this.)

- C. The Four-Year-Plan and the economic mobilization of Germany for the eventuality of war (page 19-25 German and English Prosecution Brief). That the IG played an essential part in all of KRAUCH's spheres of activity in the Four-Year-Plan (see Trial Brief, page 23) is not surprising. The IG was indisputably by far the greatest enterprise in the German chemical industry. On the whole, it was not as important in the Four-Year-Plan as the Prosecution claims (compare Basic Information Defense Exhibit 183/184, record dated 7 May 1948, German page 14141-14142, English page 13818/9).

KRAUCH's assignment to the Four-Year-Plan had not been discussed in the Vorstand (interrogation von KNIERIM record dated 5 February 1948, German page 6549, English page 6499 and see MEER record dated 11 February 1948, German page 6919, English page 6793, KUEHN record dated 30 March 1948, German page 10276-78, English page 10152). Von KNIERIM was not one of his official advisers, among whom the Prosecution Brief, page 23, counts AMROS, BUECHING and other Vorstand members*. During the years 1936-1945, he visited KRAUCH only once in his Berlin office (record dated 5 February 1948, German page 6549, English page 6499).

The quotations from HITLER's memorandum to GOERING concerning the fundamentals of the Four-Year-Plan dated July 1936, (Exhibit 41, Prosecution Document B 19), and the quotations from GOERING's statements in the cabinet meeting of 4 September 1936 may at most

serve to explain HITLER's or GOERING's views in regard to the future war - and even here various interpretations are possible -, but they do not throw any light at all on the ideas of this question of the Vorstand members of the IG and thereby of von KNIERIM, since the latter were not informed of these statements. Of GOERING's speech on 17 December 1936 before German industrialists in the presence of BOSCH, KRAUCH and von SCHNITZLER (Exhibit 421, Prosecution Document B 20) von KNIERIM did not learn anything through von SCHNITZLER's report on 22 December 1936 to the extended Farben committee either (Exhibit 422 and 423, Document B 20 and testimony von KNIERIM, record dated 6 February 1948, German page 6558, English page 6508 and dated 9 February 1948, German page 6773, English page 6650). He was neither a member of this committee, nor is he mentioned in the list at the beginning of the document of persons present, nor did he receive copies of the transcripts.

Concerning von KNIERIM's statement in the witness stand that it was perhaps possible that he had learned of this speech from the newspapers, (record dated 9 February 1948, German page 6773, English page 6650) let us refer first to Exhibit 441-R 140, Doc. B. 20, page 33 (169). The press did not report it, for, according to this document, GOERING said: "You will of course realize that everything I have told you of political matters and preparations relating to mobilization must not go any further. I do not want to experience the same disappointment as I once did when, after I had invited the representatives of the German industry to the Herrenhaus, my statements were public to a large extent by evening." Be that as it may, as regards the question whether von KNIERIM had been

able to deduce from the speech the preparation of an aggressive war, I refer to the text of Exhibit 421 11-051, Prosecution Doc. B. 20, page 58. It begins: "After a short survey the world politics and the dangers of Bolshevism and the world revolution GOERING said among other things:". Particularly at the present time, it should no longer be dubious that the Germans and also the defendants believed propaganda, which stressed at every occasion that danger and attack threatened from world Bolshevism and that one had to arm against it.

All further references in the trial brief to KRUCH's activity and suggestions emanating from him to the IG in regard to certain products, for instance chemical warfare agents and Diglykol, are irrelevant since the defendants had no knowledge whatever of an aggressive war, and since especially von KRIEGER's knowledge of these events has neither been asserted nor proven.

B) The Creation and Equipment of the war machine of the Nazis.

(p.26-44 German and Engl.transcripts of the Prosecution Brief).

1) Explosives

(page 29 of the Preliminary Memorandum Brief of the Prosecution:
"The main producer of gun-powder and explosives in Germany was the
Dynamite Company Ltd., controlled by the I.G."

Refer Facts
Neither the ~~XXXXXXXX~~ nor von KNIERIM had need - as the Prosecution Brief asserts - to "admit reluctantly" that there was a gentlemen's agreement between SCHMITZ and BOSCH of the I.G. on the ^{one} side and MUELLER of the D/G (Dynamite Company Ltd.) on the other, but have pointed to this agreement with particular emphasis from the very beginning (see affidavit von KNIERIM Exh. 326, NI-6977, Book 12, p. 81, and TSK MEER Exh. 334, NI-5187, Book 12, p. 177). It said nothing more than that Dr. MUELLER, the Generaldirector of the D/G, was to conduct the affairs of the D/G without any interference from the I.G.

For the rest, as regards the defense of von KNIERIM who had nothing to do in particular with the D/G, we refer to the elaborations in the special Closing Brief of the Defense with respect to the entire question complex of the D/G.

Stabilizers:

On page 31 the Prosecution emphasizes that the planning of the production of stabilizers on a large scale was made "at a time when the valid agreements limited the production of explosives to 2,000 tons a month". (See Record of 30 September 47, Germ.p. 1405, Engl.p. 1380).

Although the Prosecution does not link von KILBING to these matters, the following may be pointed out:

When the Prosecution claims that this procedure and the cancellation of the Disarmament Clauses of the Treaty of Versailles were a breach of international treaties and a crime against Peace, this is contradictory to the decision of the IMT with respect to this question (see IMT Judgment, part IV "violation of international treaties", official edition, Engl.p. 216/217).

As for the rest, we refer to the elaborations in the Closing Brief for TER MEER and NEBROS.

- 2) Poison Gas.
(Prosecution Preliminary Memorandum Brief, Germ.pp. 39-41).

The fact that the I.G., in July/August 1935, was ordered, upon the request of the Army (see NEBROS Record of 27/28 February 48, Germ. pp. 8020-8075, Engl.pp. 7909-8000), by the Orgacid Corp. Ltd. to construct a new plant for the production of ethyl-oxide and Polyglykol, (cf. Pros. Exh. 351, NI-5681, Book 13 and 35, p. 46) is irrelevant unless the Prosecution succeeds in proving that the defendants were thoroughly informed about the aggressive war plans of Hitler's. This proof has not been established as yet.

Furthermore, according to the aforesaid decision of the IMT, no action can be considered as a breach of international treaties, which was committed after the repudiation of the provisions of the Versailles Treaty relating to the Army, Navy and Air Force, in

March 1935.

Moreover, as regards the defendant von KNIEBEM, the Prosecution has not proved at all that he was knowingly actively connected with the preparation of poison gas, prior to 1941.

According to the description of the organization of the legal system and of von KNIEBEM's position with respect to the same, as made in the preamble of this Closing Brief, it must be considered an accident that KNIEBEM, acting for the I.G., co-signed the contract with the Orgacid of 3 July - 22 July 1935 (Exh. 351, Book 35, Engl.p. 45). On the basis of the initials of the man dictating the document, this agreement which was in no way extraordinary (125,000.- RM) and not at all interesting on account of possible collisions with other contracts, was prepared by the legal department at Ludwigshafen by Dr. BOEHMER. Von KNIEBEM did not participate in any of the negotiations (see von KNIEBEM statement, Germ.Record of 6 February 48, p. 6576-77, Engl.p. 6527, and of 9 February 48, Germ.p. 6758-6760, Engl.p.6632-663, affidavit SPENGLER Exh. 32 von KNIEBEM Doc. 38 (supplement to Book V)).

The secrecy clauses contained in the agreement had nothing conspicuous, but were customary when experiences were shared. (von KNIEBEM, Rec. of 9 February 1948, G.p.6757, E.p. 6634, and of 10 February 48, G.p.6807/8, E.p.6686).

But with regard to von KNIEBEM's information it is actually decisive that no part of the agreement mentions the word "mustard gas" or its chemical name of "Dichlordiethylsulfid". Both the agreements which have been submitted as Exh. 351, Book 13 and 35, namely,

1) contract dated 22 July 1935 between IG-Farben, per AMEROS and ORGACID re-construction of ~~Landorf~~ Plant for production of ethyl-oxide,

2) ... of no interest,

3) contract, 22 July 35, Between IG-Farben and controlling partners of ORGACID assuming obligations of ORGACID to IG-Farben) only mention the "production of ethyl-oxide from raw spirits and the production of Polyglykol M from ethyl-oxide". Only the letter from the Orgacid of 9 August 1935 - therefore, more than 2 weeks after the conclusion of the agreement - addressed to Dr. BOECKLER (also Exh. 351, Book 13 and 35, piece 2) confirms that Polyglykol M was used for the production of "Dichlordiethylsulfid".

But this letter was addressed to Dr. BOECKLER and does not show the initials of Dr. von KNIEREM, neither can the Prosecution maintain that the defendant had knowledge of it. But even if that were the case, von KNIEREM who was not a chemist - to which fact he has testified expressly - could not know that "Dichlordiethylsulfid" is a poison gas, namely mustard gas. (see statement von KNIEREM, Rec. of 9 February 48, G.p. 6758-6760, E.p. 6635-37, and of 10 February 48, G.p. 6808 - 6809, top E.p. 6687).

In the face of this fact, von KNIEREM's answer to the question whether he would have also signed the contract if "mustard gas" had been mentioned in the contract, is nothing but pure speculation without any importance. (see statement von KNIEREM, Rec. of 10 February 48, G.p. 6835, E.p. 6714). Otherwise it would be necessary to discuss the real motives behind the affirmative answer, as for instance the existence of state orders (see von KNIEREM, Rec. of 9 February 48, G.p. 6741/42, E.p. 6620/21 and AMEROS on the witness stand, Rec. of 27 and 28 February 48, G.p. 8020-8075, E.p. 7909-8000.)

Nor can the further material of the Prosecution, Exhibit 625 Doc. B 35 - the correspondence dealing with a representative of the IG in the Aufsichtsrat of the Orgacid, in which one letter is jointly signed by Dr. KNIERBECK - prove that von KNIERBECK before the war, that is to say before entering the Aufsichtsrat of the Orgacid in place of the late Dr. BUHL, in 1941, knew of the Production of poison gas and participated in its preparation. (Compare deposition von KNIERBECK of 6 February 1948 Record German page 6575/76, 6580/81 English page 6527, 6531 and Record of 9 February 1948, German page 6757-58, English page 6635/36). Furthermore, compare: The present Closing Brief Part I, chapter II, 3 pages 13 - 16 and Part II Count I, B at the end, pages 34/35.

3: Stockpiling of urgently wanted war material for the Nazi offensive (pages 44 - 46 a German and English of the Prosecution brief)

The allegedly incriminating evidence of the Prosecution cannot prove, in this instance either, that Dr. v. KNIERBECK had technically anything to do with the stockpiling of war material for the Nazi offensive. If among thousands of letters and documents

one or two dealing with unimportant matters bear KNIERBECK's signature this cannot, in view of KNIERBECK's above-outlined position in the legal sector of the IG, furnish any ^{of} proof/his knowledge or responsibility.

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- a) NICKEL, Exh. 722 NI-4921 Doc. Book 39 referred to on page 45 of the Preliminary Brief of the Prosecution merely proves that von KNIEREM was co-signer of a letter by Herr Director BRENDL of the Ludwigshafen plant, dated 2 September 1936, and addressed to the "Vermittlungsstelle W" (IG's Military Liaison Office). This letter was the covering note for a memorandum "The problem of Germany's nickel supply" intended for transmittal to the Ministry of War. KNIEREM did not take part in the preceding discussions mentioned therein or in any subsequent discussions. Document NI-9548 of Exhibit 683 Vol. 38 pages 2 and 3, additionally presented by the Prosecution, viz. the letter of Ministerpräsident Generaloberst GOEBBES, Commissioner for the Four Year Plan, Office for German Raw Materials and Semi-Finished Products*, dated 19 February 1937, addressed to the Vermittlungsstelle W has nothing whatever to do with Exh. 722 vol. 39. It proves that the nickel plant in Central Germany is to be erected in the interest of military policy and contains only the remark that Director BRENDL had received a copy of this issue. It does not prove any participation of KNIEREM. (Compare statement von KNIEREM: Record of 8 February 1948 German page 6768-70, English page 6645-46, and Record of 10 February 1948 German page 6809-6810, English page 6687-89 and Exhibit 32 Doc. 38 Supplementary Volume V page 314).
- The witness SCHLÖCHT, too, referred only to BRENDL as legal advisor in the nickel question (see Exh. HEEFLIGER No. 20 Book II Doc. 27 Record of 15 March 1948 German page 9218 English page 8120/21).

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b) 20 million Dollar oil purchase by Standard Oil.

There was an arrangement between SCHACHT and KRAUCH and it was ^{settled} ~~agreed~~ that the I.G. was to buy on behalf of the Reich. ^{Record German page 6727/42, Engl. page 6616-18} KNIERIEM's subsequent participation in the legal consultation over this purchasing contract in 1936/37 is an established fact (see Exh. 731 NI-4690 Vol. 39 and Exh. 994 NI-10551 Vol. 43). All further inferences the Prosecution might draw from that fact regarding a culpable participation by KNIERIEM in the preparation of an HITLER's aggressive war are untenable. In KNIERIEM's cross-examination of 9 February 1948, Record German page 6770-6773, English page 6690/52 the Prosecution unsuccessfully attempted to deduce KNIERIEM's ~~exile~~ ^{exile} fides from his alleged knowledge of GOERING's utterances in 1936, which ^{already} had been communicated to him through SCHREITZ and von SCHNITLER. I already set forth in Part II Count I relative to C) (page 35 - 37) of this Closing Brief that KNIERIEM had no such knowledge, and why. Nor can it be relevant what ideas the IG executives had about the purpose the oil was intended for. But even if the contrary opinion is held the following should be borne in mind: According to the unrefuted statement of the defendant not only aviation spirit but also lubricating oil was involved. After the 1935 Naval Agreement with England these products - in particular gasoline I - could be used above all for the navy. This purchase could also be regarded as a preventive measure, should actions be imposed on Germany, as they had been against Italy.

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F. Weakening of the potential enemies of Germany.
(Point 50 to 52 of the indictment; Preliminary
Memorandum Brief of the Prosecution, part I IV,
German page 47 ff.)

I. The Prosecution charges in general that the IG had established international cartels and had used them successfully to weaken the economic strength of future enemies and thus prepared for a future war. The Prosecution has omitted to furnish proof for this general charge. On the other hand this charge does not offer a basis for refutation since it confines itself to generalities. But since that charge has been raised and has been maintained, v.K. during his hearing has taken up the question of the cartels and the policy of cartels as pursued by the IG; we consider it sufficient to refer to those statements (German transcript 6581/88, Engl. page 6532/40) and to the testimony of HAEFLIGER, which bears out this statement with regard to certain fields and the documents submitted in this connection by the Defense of HAEFLIGER (German transcript page 9219/27, Engl. page 9123/29). The result shows clearly that the IG considered and used the cartels on a purely private economic basis with regard to its business.

II. In reference to the individual cases which have been submitted in this connection by the Prosecution, the defense of v.K. concerns itself only with the connection between the IG and the

Standard Oil (N.J.), because v.K. played a part in this complex. But this complex will not be dealt with here exhaustively just as this was not done in submitting the evidence material. The comprehensive exposition of the complex in regard to the general oil interest will be left to the defense Dr. BUREN-
FISCH and in regard to Dana to the defense Dr. WEL-
TER to which we shall refer in this matter. Here we shall deal solely with the special participation of v.K.'s as a jurist.

- 1) The agreements as such and their conclusion (in Doc. Book 42 of the Prosecution Exh. 942, NI-10550, Exh. 945, NI-10430, Exh. 944, NI-10432, German page 1 to 44) by no means support the theory of the Prosecution. Nothing in the contents of these agreements points in this direction. For this reason merely the fact is pointed out that these agreements had been concluded long before the begin of the Nazi period, namely 1927 and/or 1929 and 1930 - whereas the Prosecution maintains that the IG had acted in agreement with the Nazi Government already at the time when it signed these contracts - and further the statement of v.K. concerning the reason, purpose and contents of these agreements on a purely private economic basis (transcript German page 6646 ff, in particular 6648/53, 6655/56, Engl. page 6541 ff, 6542/43, 6550/53); the pertinent statements BUREN-
FISCH (transcript German page 3737/39, Engl. page 8654/55) and KRAUCH's (German transcript page 5081/82, Engl. page 5060/61), as well as excerpts

from the HOWARD' Bana Book (see v.K. Exh. 17, Doc. No. 19, Book 3, page 154 ff., in particular page 166/75, 177/79) - confirmed by affidavit HOWARD, v.K. Exh. 18, Doc. No. 29, Vol. 3, page 273/80 (supplement). It is also referred here to the report v.K.'s to a US-authority of ~~January 1946~~ (v.K. Exh. 12, Doc. No. 13, Vol. 3, page 122/123), the truthfulness and reliability of which has been confirmed through the two letters of Mr. LUSKY to v.K. (v.K. Exh. 13, Doc. No. 14, Vol. 3, page 134 and v.K. Exh. 14, Doc. No. 15, Vol. 3, page 135/36) the survey given there coincides completely with the testimony of v.K.

- 2) The execution of the agreements, in particular the stipulated exchange of experiences was of course not an affair of the jurists, but of the chemists working in the respective fields, this cannot be otherwise, considering the manner in which an exchange of ideas is effected. (statement v.K. transcript German page 6656/7, Engl. page 6552/3; BUETEFISCH, German transcript page 8806/7, Engl. page 8728/30) BUETEFISCH had therefore declared explicitly (transcript German page 8799 ff, in particular 8806/7, engl. page 8721 ff, 8728/30) that the leadership of the Sparten was responsible for the exchange of experiences, that is to say the Chemists and that since 1937 he carried the full responsibility for effecting the exchange of experiences in the Mineral Oil Field with the Standard. The explanation of the exchange of experiences in its details must therefore be left to the defense of the competent chemists in regard to the Mineral Oil Field, in particular to Dr. BUETEFISCH.

However, von KNIERIEM had a general impression based on a series of observations of the implementation of the contracts with Standard Oil and especially of the exchange of experiences. He explained this impression on the witness stand. According to this impression, experiences were exchanged mutually without reserve and in complete fairness, and the "marriage" - as the relationship between the two world firms was generally looked upon and frequently called by the participants - proceeded in full harmony (record German page 6657/59, English page 6553/55; also to be found there are details of von KNIERIEM's observations, particularly also HOWARD's attitude towards him), compare affidavit HOWARD BUEPFEISCH Exh. 129, Doc. No. 312 (submitted as supplement); reference to this is to be found in the table of contents to von KNIERIEM book 5 according to document No. 32 "..... corresponded to the highest standards of business ethics", affidavit KRUUCH Exh. 1 Doc. No. 1, volume 1, page 16, witness testimony KRUUCH (record German page 5081/32, English page 5060/61), affidavit RINGER, BUEPFEISCH Exh. 122, Doc. No. 64, volume 6, page 73 and the following.

The mutual exchange of experiences was disturbed, somewhat solely by the laws governing treason, which, to a certain extent, stood in the way of handing over military secrets, that is to say, matters which might have been important to national defense. Thus, at times, both partners were allowed to exchange experiences - only with the approval of their governments; this, however, worked both ways in equal

measure, and complete clarity about this existed between the parties (testimony von KNIEREM, record German page 6657, English page 6553; excerpt from the record von KNIEREM - Exh. 15, Doc. No. 16, volume 3, page 137, affidavit HOLDENMAN von KNIEREM Exh. 9, Doc. No. 9, volume 2, page 69 (73); the afore-mentioned affidavit HOWARD BUEFFISCH - Exh. 129, Doc. No. 312; testimony BUEFFISCH record German page 8810/19, English page 8735/40; testimony KLAUCH record German page 5153/54, English page 5129).

- 3) In view of the special interest, we briefly enter into the case of Dunn in particular. The so-called Jasco agreement of 1930 has been submitted to the Tribunal as Prosecution Exh. 945 NI-10433, Book 42, page 45. For the reasons for the agreement compare the testimony von KNIEREM (record German page 6667/69, English page 6564/67). On the basis of the agreement, - and there is no argument on this point - the I.G. had to give the Dunn process on mineral oil basis with all the pertinent know-how to the Jasco, which belonged to both partners on a 50% basis, for natural utilization whenever it was ready for licensing, after it (the I.G.) had first developed the process in its own plants in agreement with both partners and for their mutual interests.

The Standard Oil once stated jokingly that the Jasco agreement was not actually a real agreement but rather an agreement to agree (von KNIEREM record German page 6669, English page 6565/66). Evidently, the Prosecution gained a similar impression, as it repeatedly stresses the binding nature of the

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Jasco agreement despite its "general formulation", see for instance Preliminary Memorandum brief German page 47. The Jasco agreement has been submitted to the Tribunal and it can form its own opinion about it. Reference is made in about six places of the agreement to the effect that this point or that was to be settled later. In his direct examination von KNIERIEM nevertheless accepted the point of view of the Prosecution that the Jasco agreement was to be considered a binding agreement. This view appeared to him to be correct, although a different one might have been promising and more advantageous from the point of view of the trial.

Apart from its empty assertion, the Prosecution has been unable to present anything to show that the I.G. already at the conclusion of the Jasco agreement intended a weakening of American industry or anyhow had any motives other than purely private economic, reasonable and fair.

- 4) As regards the implementation of the Jasco agreement, especially the exchange of experiences, basically the same explanations apply as to the implementation of the Standard Oil agreements in general; see above ad 2) page 47, for the rest compare testimony von KNIERIEM record German page 6669/74, English page 6566/72. Only a technical expert, an expert in the special field concerned, can undertake or direct an exchange of experiences, not a lawyer. This is also confirmed by TER MEER's description

of the collaboration between the participating firms in this case (testimony TER MEER record German page 7088/7115, 7129/55, English page 7039/56, 7080/7103).

However, in view of the close connection between the turning over of the know-how and the somewhat complicated agreement regulation, I briefly state the following: during his direct examination, von KNIERIEM stated the date on which the Buna-know-how on mineral oil basis had to be turned over to Standard Oil. This date was the fall of 1939; before that, one could not yet speak of a finished process ready for licensing of third parties (von KNIERIEM record German page 6671), English page 6568, TER MEER German page 7144/53, English page 7094/102, excerpts from the Buna book by HOFERD, von KNIERIEM Exh. 17, Doc. No. 19, Book 3, page 154 and the following, especially 201, 204). After the outbreak of the continental war, however, the I.G., in view of the laws governing treason, was unable to turn this know-how over to the Standard Oil, since it would have got into the hands of England and France. With the permission of the German government, the patents were transferred by the I.G. (testimony von KNIERIEM record German page 6672, English page 6569/71, the above quoted excerpts from the Buna book by HOFERD, especially page 207 and the following, ~~207~~²⁰². Whether and to what extent this patent transfer was colored by the idea of improving the position of both partners in the face of a possible future American alien property custodian in the event of the USA entering into the war, is irrelevant for the present trial.

If the time when the Buna-know-how could and had to be given came only in autumn 1939 it is perhaps noteworthy that parts of the Buna-know-how had undoubtedly already been given before (statement for MEER German transcript p. 7147/48, 7151, English p. 7095/96, 7099/7100; statement of the Standard Oil president FARISH before the Senate Committee, v.K. Exh. 31, Doc. No. 35, Book 5, p. 289/91; affidavit HILDEBRANT v.K. Exh. 9, Doc. No. 9, Book 2, p. 69 ff, in particular 77/78, the frequently quoted excerpts from the HOWARD Buna Book, for instance p. 202). This is explained quite easily by all the circumstances. Even though the data for divulging the entire know-how were only attained in autumn 1939, the know-how as such ~~was acquired~~ ^{was acquired} currently. These individual experiences did not have to be forwarded in small doses whenever the occasion arose. But the IG did not have any private economical inhibitions at all to show the Standard Oil people who visited in Germany and were interested, occasionally parts of the manufacturing process even though this may have been a rather incomplete form of giving information on the know-how according to the above made expositions. The only restraint which applied to the IG was the already mentioned anxiety in view of the regulations pertaining to treason (see in this respect affidavit HILDEBRANT v.K. Exh. 9, Doc. No. 9, Book 2, p. 69 ff, in particular p. 78).
But the situation here

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was not always the same. For instance, as is apparent from the letter of the Reich Ministry of Economy, dated 14 September 1936 to the IG (for MEER Exh. 199, Doc. No. 127, Book 7, p. 57), even the delivery of Buna products to the USA was forbidden at that time, which in itself of course was much less objectionable than the disclosure of manufacturing know-how. At the time however when for MEER went with the approval of the German authorities to the USA in autumn 1938 for the purpose of Buna negotiations the authorities had changed their mind about the matter. Thus it came about that the "chlorination process" in Ludwigshafen was shown to the Standard Oil people in the spring of 1939 (statement FARISH before the Senate Committee, v.K. Exh. 91, Doc. No. 33, Book 5, p. 269, affidavit STIDER, v.K. Exh. 9, Doc. No. 9, Book 2, p. 69 (78/79)).

In order to understand the whole development it is most important to realize the following, the Buna-process of the IG, many a time during the years before 1939, did not appear to be very profitable or advantageous to American conditions (statement for MEER German transcript p. 7097/98, 7103, 7106/7, 7136/37, 7142, 7144, 7148, English page 7049/50, 7054/55, 7057/58, 7087, 7092, 7097, EX-150's Buna Book, in particular p. 181/84, 193). This factor lessened the interest of the Standard Oil, which therefore had no interest at all in the Buna-know-how being given in "small doses". Furthermore it is a particular great mistake just in this case to judge the matter ex post facto.

i.e. to see it with our eyes today on the basis of subsequently gained knowledge of events which occurred only later and which nobody foresaw or could foresee. This in the middle of the 30ties could imagine a war with Japan, the conquest of Singapore, of the Malay Peninsula and Netherlands Indies and an embargo on rubber deliveries to the USA?

- 5) As far as concerns the Butyl-rubber-process which was particularly emphasized by the Prosecution in its Preliminary Memorandum Brief on p. 50, which the IG received from the Standard Oil, the assertion of the Prosecution has been completely refuted by the statements of FAREH and SCHMID before the Senate Committee (v.N. Exh. 31, Doc. No. 33, Book 5, p. 289/91); Butyl-rubber was of no value to Germany because of lack of the most important raw material Isobutyl and the Butyl-rubber process did not have a secret know-how, on the contrary, everything could be found in the patents which were published and known everywhere.

6. The effect of these contracts and of their carrying out was not a tactical obstruction for the development of the strategic industries of U.S.A., as asserted by the Prosecution in count 52/53, but to the contrary an exceptional enrichment, an increase and acceleration of the American production possibilities just in many fields of strategic importance (v. K. transcript

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Gern. p. 6659/60, 6662/64, Engl. p. 6555, 6558/60;
the lecture of HASLAM, Vice-President of the Standard
Oil Comp., confirmed by affidavit KRAUCH - Exh. 202,
Doc. No. 39, Book 9 (supplement) (v.K. Exh. 16, Doc.
No. 17, Book 3, p. 138/48); the testimony of PARISH
before the senate committee, quoted already several
times; the affidavit HOWARD DUETEFISCH Exh. 129, Doc.
No. 312). On the basis of them, it was the very ex-
periences furnished by the IG in many important fields
that made the high technical level of the USA warfare
possible. As regards the draft of the IG's answer to
HASLAM's lecture, designated for internal uses, as sub-
mitted by the Prosecution in Exh. 994, NI-10951, Book 43,
Gern. p. 80), v.K. (Gern. Tr. 6662/64, Engl. p. 6558/60)
and DUETEFISCH (Gern. Tr. p. 8319, Engl. p. 8741/42)
have said what was necessary. According to them it was
not all intended to tell the untruth when this draft
was composed, but it was somewhat "colored" in view of
the purpose of these elaborations; this was done to
defend the management of the IG against the charge of
treason, seen as a possibility and regarded with the
greatest concern by the IG after HASLAM's lecture - and
before the NSDAP People's Court in 1944 at that. For
the rest it is in the nature of any exchange of ex-
periences that both parties are enriched, and the pre-
pared answer of the IG naturally shows more distinctly
the one side, and HASLAM's lecture the other one.
Therefore, both descriptions did not contradict
each other, even if we leave the "coloring" out of
consideration, but supplement each other

and give a correct picture if taken together.

Furthermore, the assertion of the Prosecution (point 57, at its end,) that the IG was responsible for the calamitous rubber shortage in the USA at the beginning of the war in December 1941 (Pearl Harbour) has been refuted by the statement of PARISH before the committee of the Senate which has been mentioned already several times. According to it, sufficient information relating to the erection of Buna-factories and to the production of Buna was already on hand in the USA on the basis of the previously shown continual supply of parts of the Buna-know-how by the IG. The fact that the building up of the Buna manufacture in the USA apparently took considerably more time than expected was obviously caused by quite other, purely domestic American reasons. Chapter 10 ff of the HOWARD book speaks about them, but this does not relate to this case, for which reasons the Defense has refrained from introducing these chapters.

- 7) But even if the IG, contrary to the agreements, had withheld Buna-know-how from the Standard Oil, and if this had actually led to the tragic rubber calamity in the USA at the beginning of their war at the end of 1941 - both of which facts are contested most emphatically and which, in our opinion, have been clearly refuted by the hearing of the evidence, as stated above, - there is not even the shadow of a proof for the assumption that such an attitude of the IG was dictated

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by the intention of making preparations for an aggressive war. And only then would it be possible to construct a war crime.

- 8) As evidence for this entire point, the Prosecution has submitted, as Exh. 1019, NI-10785, Book 13, p. 285, Germ., a statement of Francis BIDDLE which contains a host of unproven charges against the IG. One of these charges is the following:

" It was the German chemical and dye companies which, as early as 1921, with the assistance of the German Government, made it difficult for American firms to hire German scientists. The attempt on the part of DU PONT to do this was followed first by putting the scientists in jail....."

The actual facts are disclosed by the statement of KUEHNE (Germ. Tr. p. 10276/77, Engl. p. 10138) and by the affidavit MEEBEEK (KUEHNE Exh. 51, Doc. No. 51, Book 2, p. 112), namely, DU PONT attempted to induce some chemists of the Dye Staff Manufactures formerly Friedrich BAYER and Co. (the predecessors of the IG) to leave their firm and join DU PONT. These chemists were caught redhanded when they attempted to take some important secret data which they had stolen from BAYER by breaking into the factory, with them - to the USA.

This charge and its reduction to the actual facts shows strikingly with what carelessness charges were raised in the USA against the IG on account of the psychosis of the war years; on the other hand, it also proves

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how dangerous it is to make statements which are based
on an insufficient knowledge of facts.

G. Propaganda, Intelligence and Espionage.

(pp. 54-72, German and English text of the Prosecution Brief)

The trial brief of the Prosecution does not mention von KNIERIEM in connection with any activity or knowledge in these fields.

The tasks of the American company "Cheneyco" and its natural connection with Standard Oil and I.G. were set forth by von KNIERIEM when questioned directly (cf. record of 6 February 1948, G. p. 6586, E. p. 6537).

Exhibit 1869 NI-14022 submitted by the Prosecution during von KNIERIEM's cross-examination, has nothing whatever to do with espionage abroad, but deals with the combatting of the so-called economic and industrial espionage which was tried by competitive firms in the case of the I.G. just as it was done with all large industries in any country (cf. Statement von KNIERIEM; record of 9 February 1948, G. pp. 6754-55, E. pp. 6631/32, and of 10 February 1948, G. pp. 6805-07, E. pp. 6683-85, and statement KUEHNLE, record of 30 March 1948, G. pp. 10276/78, E. pp. 10137/39, and Doc. KUEHNLE No. 51, Exh. 51).

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H. -

I. Camouflage and Disguise.

Points 69 to 73 of the Indictment; Prosecution
Memorandum Brief, Part I IV H. of pp. 72 to 74).

- 1) In points 69 to 73 the Prosecution charges that the I.G., as an act of preparation and planning of aggressive war, had camouflaged and disguised since 1937 its property abroad in order to protect it from seizure by enemy custodians in the wars to come.

The fact that the I.G. tried to camouflage part of its property abroad has never been denied in the pending proceedings. But these efforts were based on other reasons than the Prosecution believes.

This camouflage was a matter of the sales combines together with its legal ~~departments~~ ^{departments}, and for historical and business reasons the Sales Combine Farben together with its legal ~~departments~~ ^{departments} in Frankfurt, played a leading part in this process. (Statement v.K., records G.P. 6676, E.P. 6574, Statement KUESTER, record, G.P. 2945, E. 20.

2924/25). It is undisputed, neither the legal ~~departments~~ ^{departments} in Ludwigshafen nor the legal ~~departments~~ ^{departments} in Berlin NW 7 - the two legal ~~departments~~ ^{departments} with which v.K. was closer connected - were attached to any of the sales combines, since at Ludwigshafen - as is well-known - there was primarily only the big plant but no sales agency, and in Berlin NW 7 only

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administrative agencies. Although v.K., therefore, had to do with questions of camouflage only to the extent as they were treated now and again at the meetings of the legal committee we will go here more closely into the complex of camouflage and disguise for reasons of division of work.

- 2) Moment of introduction and reasons for camouflage - are set forth in the statements v.K. (record, G.Pp. 6679/81, 6788, 6815, E. pp. 6576/78, 6665/67, 6694/98) and KUEPPER (record, G. pp. 2928, 2943/44, 2946, E. pp. 2905/07, 2923/24, 2926/27). According to then, the camouflage measures, in their initial stages, began already before World War I with the predecessor firms of the I.G., and after the foundation of the I.G. already a considerable time before 1930, when Dr. KUEPPER began to deal with these things. The reasons were to be found in the first place, and for the most part, in the existing taxation regulations and purported to avoid an unbearable and discriminating taxation of normal business activity in most of the foreign countries. Added to this must be direct hampering of business activity abroad, the increasing boycott abroad against German goods and similar considerations of a purely business character which did not have anything to do with war. This is corroborated by the statement of MANN (record, G.p. 10510, E.p. 10377) referring to the camouflage measures at the Sales Combine Pharmaceuticals, where they played a minor role. The same picture is given by all the documents produced in this connection, in particular

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also by those of the Prosecution; see the letter of the Finance Secretariat of the Central Finance Administration to the Reich Ministry of Economics - incidentally without any participation on the part of v.K. -, dated 24 July 1939, Pros. Exh. 1024 NI-8496, Vol. 50, p. 47; draft of a report of the I.G. to the Reich Ministry of Economics - again without v.K.'s participation -, dated 26 September 1940, Pros. Exh. 1035 NI-2746, Vol. 50, p. 97, in particular 101/2, 105, 107/9, 112, 114; Dr. KUESTER's oral report at the conference of the legal committee of 2 October 1940, Pros. Exh. 1038 NI-⁸⁴⁷⁶~~8476~~, Vol. 50, p. 127, in particular 130 and following.

Thus, if the camouflage measures were from the beginning based on merely business reasons and originally did not have anything to do at all with war, the renewed and intensified examination of this matter from 1937/38 onwards was not caused by a threat of war either. It was caused by the fear of incalculable and morally unjustified measures of ~~seizure~~ ^{expropriation} in connection with the loan, warranted by the I.G. on a gold basis, of the American firm of American I.G., the later General Aniline & Film Corporation (G.A.F.), that is to say, in regard to possible gold clause suits against the I.G. This was shown so clearly during the hearing of ~~the~~ ^{the evidence}, and the problem was treated there so intensively that a mere reference to this is made here. (v.K. Exh. 19, Doc. No. 20, Vol. 4, p. 219 (220); Pros. Exh. 1373 NI-14023; Statement v.K. record, G. p. 6679, E. p. 6577).

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The fact with which v.K. was confronted by the Prosecution in the course of his cross-examination, namely that the IG tackled the Gold Clause Problem only long after it cropped up, has also been refuted by the content of the documents. According to v.K. Exh. 3, Doc. No. 3, Book 1, p. 11 (17), the legal committee dealt with the problem of the liabilities which arose from the Gold Clause in view of the relations and interests of the IG already in the course of the meeting of 15 June 36.

The idea of making provisions against possible war dangers appeared approximately in 1938 as the last of a long line, as shown by the said documents and statements unanimously. But this fact does not at all help to support the assertion of the Prosecution. It is a well known fact that the times had become rest-less than and it was the self-evident and normal reaction of a world combine like the IG not to close their eyes to such a danger and to think about safeguarding of the properties, just as a careful head of a family, everywhere in the world and at all times, tries to protect his property from an arising tempest. There is nothing to prove the solely decisive conjunction that the IG, with these measures, planned or prepared on a possible war or that the IG at least had knowledge of such intentions of the National Socialist Government.

Likewise, the theory of the Prosecution has been refuted, namely that

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the meeting of the legal committee of 17 March 38, in which - besides numerous other items - reports were made and discussions held with respect to the protection of IG-properties abroad, was called in connection with the occupation of Bohemia and Moravia, which occurred two days earlier. (statement v.K., GermanTr. p. 6676/77, Engl. p. 6574/75)

- 3) Finally it is general knowledge that it is usual and natural everywhere for businessmen with international connections to make provisions against war dangers in the world commerce; it is of no great importance for the evaluation of facts here whether such provisions were made in one case by the addition of respective agreement clauses (such as in the publicly known printed insurance policies) or, in other cases by camouflaging of property abroad which, of course, is not intended for general knowledge; see statement v.K., Germ. Tr. p. 6676, Engl. p. 6575; Stipulation, Germ. Tr. p. 6723/24, Engl. p. 6600/01.

The fact that foreign firms have always masked their properties abroad, and in Germany too, is disclosed by the statement of KUTTER, Germ. Tr. p. 2932/33, Engl. p. 2911/12; the firm in question was the Canadian Mond Nickel Co. The respective conversation between KUTTER and the representatives of the Mond Nickel Co. took place already in the middle thirties; with respect to this, therefore, the policy of the IG was

absolutely parallel to that of other world-wide firms. It was just the natural defensive fight of the pioneers of trade throughout the world against state discriminations with respect to international commerce.

For the rest, the fact that Dr. KUESTER unhesitatingly informed the Canadian firm about the camouflage system of the IG is already proof enough to show that the IG did not consider it a political secret and did not connect camouflaging with dangers of war; if the Prosecution were right in its assumption, it would have been inconceivable that the IG frankly enlightened a Canadian firm about the camouflages of the IG.

As regards additional cases of camouflaging of foreign property in Germany (Standard Oil and Shell with respect to the Hydration Plant Societe Ltd.) see KUESTER Record, Germ. p. 2933, Engl. p. 2912.

Likewise, the intensified attention which the IG paid to camouflaging from approximately 1938 onward was in line with the general practice of the commercial circles interested in world-wide trade; according to KUESTER's statement (Germ. Tr. p. 2931, Engl. p. 2909/10), an increased war insurance was usual at that time.

- 4) Apart from the aforesaid points there are still some other factors to prove strikingly that the idea of safeguarding foreign properties against the dangers of war played only a secondary role as far as the IG was concerned and was not at all pursued so systematically and unfalteringly

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as the Prosecution assumes and as the actual situation would have required.

In its essential parts, camouflaging applied only to the sales interests, but not to the production interests abroad of the IG (Report KUESTER, Pros. Exh. 1038, NI-8646, Book 50, p. 127; statement KUESTER, Germ. Tr. p. 2926/28, Engl. p. 2905/07). This differentiation can only be explained with the different tax situations, which thus are proved to have been the decisive factor, and would have been quite senseless as an intended provisional measure against any seizure under war regulations.

From December 1937 until the Sudeten crisis in the fall of 1938 nothing was done with respect to safeguarding the foreign assets of the IG in spite of discussions to this effect in the meeting of the legal committee of December 1937 (AMCHAM's question to V.K., and V.K.'s statement, Germ. Tr. p. 6786/87, Engl. p. 6665/65, Pros. Exh. 1872, NI-14024; statement KUESTER, Germ. Tr. p. 2952, Engl. p. 2932/33). It goes without saying that the IG would never have neglected this problem to such an extent if it had been engaged in the planning and preparing of an aggressive war or had had, at least, even thought of such things.

Even after the continental war broke out in the fall of 1939, American business friends voiced their disappointment because the IG people showed so little understanding for the necessity of safeguarding of German properties in the USA. (Prosecution Exh. 1028

NI 5773 At 50 p. 70

At the same time this letter shows that the idea of the USA entering a war against Germany was generally taken for granted and that it was therefore the most natural thing in the world that the IG gave serious consideration to its situation in the USA in view of such a possibility.

5.) Finally the whole complex is seen in its right aspect only when considering the fact that the IG carried out the camouflage of its interests abroad by no means in agreement with the Nazi-Party or by synchronizing its measures with those of the Nazi regime, but in constant violent opposition to the regime; to maintain its camouflaging measures it had to wage a constant and wearysome fight with the organization of the Party in charge of this sphere, the A.O. (Ausland-Organisation) (statement KRIEGER, German transcript page 2931/32, 2946, S.p. 2910/11, 2926, statement v. KRIEGER, German Transcript page 6678, S.p. 6576).

6.) In this connection the Prosecution cites the measures which the IG took in 1940 with regard to its relations with the IG Chemie Basel and thus indirectly to the above mentioned USA firm General Milling and Film Cooperation (G.M.F.). The Prosecution Exh. 1030/34 refer to the case of I.G. Chemie.

In view of all the circumstances and in view of the comprehensive treatment of this complex in the hearing of evidence, the defence is of the opinion that it is sufficient to refer to the hearing of evidence.

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(statement v. KNIERIM, German Transcript page 6706/11, E. page 6581/86;
the basic agreement v. K. Exh. 21, Doc. No. 21, Book 4, page 224, the parti-
nent transcripts of the Vorstand v. K. Exh. 22, Doc. No. 22, Book 4, page 232
ff). The contact with the Wehrmacht mentioned by the Prosecution was
limited to one single point of less importance within the framework of the
execution of the entire quite extensive and complicated transaction. (sta-
tement v. K. German Transcript page 6708, E. page 6584).

It is unfathomable how the Prosecution can see in this transaction the
preparation and planning of an aggressive war.

7.) The result of the above examination of the evidence is, that measures
in this field were taken for the most part purely for business reasons
which had nothing to do with war and also that insofar as safety measures
against the dangers of war played a part it was the generally usual and,
from the business-point of view understandable and necessary precaution
against the danger of war in general. Any evidence as to the planning
and preparation of an aggressive war or the knowledge of such is nowhere
to be found in the entire complex.

II. New Order.

(Point 79 to 83 of the indictment; Preliminary Memorandum Brief of the Prosecution part I IV B, G.p. 74 to 75)

1) In point 79 to 83 the Prosecution cites as part of the planning and preparation of aggressive wars and as evidence thereof the IG plans of 1940, which are known by the term "New Order".

2) In regard to this whole complex reference is made to the detailed statement of the defendant KUNER (German transcript page 12856/65, E. page 12583/92) and to the defence of von SCHNITZER. The expositions below confine themselves to the points of the complex wherein the Prosecution accuses Herr v. KNIERIEM of direct participation, in particular of his ideas concerning a new order in the matter of European patents. In the evidence submitted for v. KNIERIEM this complex is dealt within transcript German page 6713/19, E. page 6588/96.

I only want to say the following in general with regard to this complex: it concerned ideas for an economic area, embracing the whole of Europe, a United Europe, that is to say an idea the justification and inevitability of which is more and more recognized today and is actually indisputable. In connection with the Marshall-Plan such an economic unity of Europe has even

been considered a sine qua non for the granting of the Marshall Plan aid. ^{after this concept} That at that time Germany was to have the leadership within this United Europe was only understandable in view of the then prevailing situation and could ^{hardly} ~~not~~ be otherwise.

Besides, submission of evidence of both sides has clearly shown that it concerned a "hastily compiled document, desired by the Government", a fact which had been contested by the Prosecution in point 82 (Pros. Exh. 1049, NI-4877, Book 51, U.p. 38; Exh. 818, NI-6293 Book 51, page 40(44); statement SCHLOTTERER, German Transcript p. 5900/03, S.p. 5855/58; statement KUGLER, German Transcript 12856, 12858, S.p. 12584, 12885/86; statement v. KRIEGER, German Transcript p. 6713, S.p. 6588; statement MANN, German Transcript 10512, S.p. 10377/78). The drafting of the plan was demanded by the German Government and was carried out by the IG after the conquest of Poland, Norway, Holland, Belgium and France, after the occupation of Denmark and while the war against England continued in connection with the armistice agreement and the preparation of a peace treaty with France.

It is incomprehensible how this plan of the IG, in view of all the circumstances and in view of the time it was made, is to prove the preparation and planning of aggressive wars by the IG or even knowledge thereof.

The Prosecution neither offered the slightest proof nor even made a concrete assertion that the I.G. had concerned itself with plans and schemes of this kind already at an earlier juncture; but this alone could have warranted such a conclusion.

- 3) Von KUBERLE's personal participation in the "New Order" consists of his ideas regarding a standardization of legal trade protection (*gewerblicher Rechtsschutz*) on the European Continent. It is right, and, if one is to grasp the complete picture, essential to consider the treatise dated 20 July 1940 (Proc. Exhibit 1050 III-4695 Vol. 51, German page 46) together with the essays published later (v. KUBERLE: Exh. 23, Dec. 26, 24, Vol. 4, page 239 and the following). (Compare testimony v. KUBERLE, record German page 6714, English page 6590). It is noteworthy that these later essays, too, were written at a time when Germany still stood at the zenith of its external power and more or less dominated Europe. It follows from this that these essays were by no means prompted or toned down by the notion of a decline of Germany's position of power. The more impressive is the evidence in these essays of von KUBERLE's generous, moderate and truly European attitude toward the problems as a whole. The various statements essentially speak for themselves. They show the torn condition, the slow and obsolete character of the European patent system, in as much as

there existed in Europe - always interdependent economically to a relatively great extent - an almost unbelievably large number of independent patent regions, some of them infinitesimal in size; they show, furthermore, the innumerable, in some instances, almost stifling complications which resulted from this state of affairs (Proc. Exh. 1050, especially page 58; v. KIERIEM Exh. 23, especially page 240; testimony v. KIERIEM, record German, page 6715, English page 6590/91).

In the field of trade protection, ^{especially patents} there had always existed a particularly extensive international collaboration, even as regards legislation. There were the Union agreement and the International Bureo Office. For decades, efforts had been made to simplify and standardize the European patent system. (Affidavit MESER of Pilseck, v. KIERIEM Exh. 24, Doc. No. 25, Volume 4, page 252 (255)).

If the German patent law was mentioned as a basis, it is because it was generally recognized as especially modern and sound; also, the German patent office, with its efficient and thorough methods of patent examination, enjoyed the best reputation. V. KIERIEM's ideas, however, aimed at making it a European authority by voluntary international negotiations; he also left open the possibility of amending or altering the German patent law, and even made concrete proposals to this effect. In view of the political situation at that time, all this really was the utmost conceivable limit of internationalism that could be dared.

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In this connection it must also be borne in mind that Germany had for ages been the leading and centrally-situated industrial country on the continent of Europe.

In view of this, the interpretation of the Prosecution, that the IG, by means of a centralized patent control in Germany, had intended to dominate the economy of the continent (Preliminary Memorandum Brief, Germany page 74), is utterly refuted. Here we have the mind and voice of an entrepreneur and jurist who, in his special sphere, progressively and organically thought far beyond the national boundaries, which were no longer in keeping with industrial development. (Compare also the explanations of the Defense, Record German page 6717/18, English page 6593/95, and Affidavit of Filsch, von KIERICH Ex. 24, especially page 256).

- 4) Connected to a certain extent with the "New Order" is the question of the French patent protection in the sphere of pharmaceuticals. Conditions there were unsatisfactory and antiquated, not specifically from the point of view of the German industry, but generally so. In the interest of a real progress, the IG used this opportunity to urge a change; this was in tune with the interests and efforts of the entire French pharmaceutical industry. There was no question of any pressure whatsoever being brought to bear on French agencies. Compare also the essay by v. KIERICH, Ex. 23, Doc. No. 24, Vol. 4, page 246 (247/48) where the problem of the patenting

of medicines is mentioned specifically, and from which it emerges quite clearly that only voluntary decisions and measures on the part of the countries concerned were envisaged. The French government issued an appropriate law which - in contrast with most of the laws issued by the Vichy government - was sustained by the post-war French government. (Pres. Exp. 1267 "U-7656, Vol. 59, page 40; Testimony von KERNER, Record German page 6712/13, English page 6387/88; Testimony KERNER, Record German page 6295/96, 6506, English page 6240/41, 6451; in particular and in detail, moreover, the defense "U-7; his testimony, Record German page 10525/90, English page 10991/159 and the pertinent documents in Doc. No. 12 "U, Volume 4, part 12/35).

As regards the passage (Record German page 5795/96, English page 6673/74) from the IL-record dated 12 November 1940 (Pres. Exp. 1622 "U-9288, Vol. 57; with regard to the passage in question it is identical with "U-7 Doc. No. 199 Dec. No. 345, Vol. 4, page 51), wherein v. KERNER, at the point "France and Belgium", asks that the wishes for patent protection be considered: From the whole context, it can, likewise, only concern this specific question of French patent protection in the field of pharmaceuticals. The request is connected with a discussion on Marx-Joulenc with which the IG had relations only in the field of pharmaceuticals.

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An exchange of experiences and a certain cooperation with regard to these special questions of patent protection has existed, especially with Rhone-Poulenc, for years. Only in this connection can the expression patent protection be understood. In this respect it would have been totally pointless to talk about the European patent unification, neither would this have had any reasonable connection with the matter.

- 5.) In this connection the Prosecution's basic theory is that the IG had a constant desire toward expansion and that the IG's ultimate aim was the domination of the world's chemical industry; that the IG's policy was constantly one of enlargement (Record German page 6720, English page 6596, Prosecution Memorandum Brief Part I IV H, German page 72, Part II 1 3 G.p. 2/3). This concept is opposed by the IG's ardent attempts to decrease its size drastically and voluntarily, which attempts were caused by the feeling that the concern had already become too large. This decrease in size was to be effected by means of the giving away of shares of its subsidiary companies, that is to say of IG interests, in future exchange for convertible bonds which were to be newly issued. It will suffice to draw attention to the individual statements of v.H., (Record German page 6720/22, English page 6596/98) and to the documents mentioned by the Defense during these statements. On the basis of these documents it is clear, that this transaction was of a voluntary, serious, practical and effective nature, that it was completely ready to be put into effect and that it was only due to outside developments that it was not put into effect.

J. Reply to "The subjective state of affairs".
(Pages 76 - 103 German and English of the Preliminary
Memorandum Brief of the Prosecution).

For the purpose of the completion of the Defense's General statements in the Pleas and Trial Briefs, which are expressly referred to, the statements of v. KNIERIM in the Record of 6 February 1948, German page 6559-6563, English page 6509-6514 and of 10 February 1948, German page 6810-6811, English page 6689, are to be taken into consideration.

Von KNIERIM did not deny that he knew about Germany's rearmament.

The fact that there were in existence mobilization plans and the fact that these were kept secret could not cause him to suspect that an aggressive war was planned, due to the general reasons mentioned in his statement. As far as he personally was concerned, there was still certain other circumstantial evidence which - even if considered retrospectively - points against the intention to carry on an aggressive war.

With regard to rearmament the Prosecution argues in the Trial Brief, Part I, II C: the subjective Side, page 10:

"It is sufficient if there exists the belief that although actual force will be resorted to if necessary such purpose will be accomplished by using the military power merely as a Threat."

With regard to that the defendant von KNIERIM stated the following which was not refuted:

"I never had any such idea. If I had thought about it I would probably have had the opposite impression - that a country without protection is in danger of being exposed to such pressure from others. In all these questions - and this is

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what I want to say before - it is important to consider that Germany remembered very well the sanctions against Italy."

(See Record of 10 February 1948, German page 6810-11, English page 6689).

His position in the legal sphere of the IG, which is described in Part I, pages 16 - 26 of this Closing Brief, shows that von KNIERIM was only vaguely orientated about the technical and commercial happenings. But this shows further that he must have been even less informed about the aims and plans of the German Government than technicians and merchants; and the Prosecution has so far not been able to prove even the latter's knowledge. It is significant that the Preliminary Memorandum Brief of the Prosecution, page 85, does not include von KNIERIM in the functionaries which belonged to the Reich Group Industry which ~~was~~^{are} endowed with governmental powers in view of the German war mobilisation.

With regard to knowledge of so-called fictitious contracts which were of importance for the rearmament, see the statements Part II Count I C, page 34/35 at the end of this Closing Brief. Von KNIERIM^{also} was not a "Vehrwirtschaftsfuehrer" (see page 93 Prosecution Brief).

Part III

Count II. Robbery and Spoilation.

- 1) The evidence produced both by Prosecution and Defense Counsel shows that v.K. neither in one of the concrete cases in which the Prosecution sets robbery and spoilation, nor in any basic relation, took an active part or even assisted to some considerable degree or exercised an advisory function in those dealings. This is a consequence of the fact that those things were outside his sphere of work. It was only in some individual cases that he had to do with definite special questions in a merely perfunctory manner. In all the documentary material produced by the Prosecution in connection with this count, the name v.K. is mentioned only in two cases, and there also only on the periphery: Chemie Ost G.m.b.H. and Synthetisch-Kautschuk Ost G.m.b.H.; for that see below under B/c), pp. 62/33.
- 2) The reason why v.K. did not deal with those matters, and the answer as to who treated them as a lawyer, follows from our expositions relating to the organization of the legal system (D II), pp.8/16, and to v.K.'s position in the I.G. (D III,1), in particular pp.17/21. In order to avoid repetitions let us refer to those expositions.
- 3) In none of the cases in question here, anything wrong or suspect could be gathered from the reports made at the conferences of the Vorstand or at any other conferences attended by v.K. - as far as such

reports were made at all - , and in other respects no clues were offered v.K. in this direction either. Any punishable participation on the part of v.K. is therefore out of the question, even if the Tribunal, in contrast to v.K.'s conviction and in contrast to the Defense Counsel's conception, should consider, objectively, the commission of any punishable acts as given.

- 4) As for v.K.'s dealings with the pertinent basic problems in general, reference is made to the discussions at the conference of the legal committee of 2 October 1943 and the report made there on the legal status of the occupied territories, and to the statements made in the Closing Brief in regard to that matter (D II 2) p.13; (D III 1) pp.16/18, in particular p.21; furthermore compare Proc.Exh.1875 XI-6434; Statement v.K. record 8, pp.6796/98, 6822/24, 2, pp.6674/78, 6701/03). Because of the importance of this point, let us stress once more that the treatment of the matter in question by the I.G., particularly by the Legal ^{Department} ~~Department~~ Ludwigshafen, which offered cause and basis for the report and discussion in the legal committee, has in no way been objected to by the Prosecution. For the rest, we consider the statements made in the index of Proc.Exh.1875 partly as leading astray. The report does not deal with the German policy in regard to the property in the occupied territories, but deals, in a pronounced legal-scientific

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analysis, with the legal status of the occupied territories.

- 5) Concerning the individual points, the Defense is being conducted each time by those ^{Legal Experts} ~~attorneys~~, who have dealt especially with the respective case. Reference is made to that.

a) The case of Austria is being dealt with only insofar as it shows in an exemplary manner just how these cases were handled independently by the competent legal ^{Department} ~~authorities~~ in this case - just as in the case of Czechoslovakia - by the legal ^{Department} ~~authorities~~ Chemicals in Frankfurt. At the legal committee, reports on such matters were made - if at all - only in cases of special importance and general interest and after the matter had been brought to an end (record of the legal committee dated 15 November 1938, Proc. Sch. 1872 XI-14024).

b) In the case of Poland, neither the Legal ^{Department} ~~authorities~~ ^{Leg-} wismann nor the legal committee was involved in any way; the legal work was done exclusively by Legal ^{Department} ~~authorities~~ Farben in Frankfurt/Main (Proc. Sch. 1875 XI-8454; Affidavit BREDEL, v.X. Sch.1, Doc.No.1, Vol.1, p.1 (4) concerning No.6; Statement v.X. record G.pp.6725, 6798, E.pp.6603, 6676; Statement KUEPPER record G.pp.29-11/43, E.pp.2920/23).
At the Vorstand conferences, the talk was only of taking the Boruta on lease; even if interpreted in the most narrow sense, such as lease

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could be kept without difficulty within the limits drawn by the Hague Convention concerning Land Warfare (Statement v.K. as above; Statement HAEFLIGER record G.p.9280, E.p.9178).

c) Case Norway was handled by Legal ~~Department~~^{Department} Chemicals, in other respects, among others, by the Central Finance Administration, not, however, by Legal ~~Department~~^{Department} Berlin NW 7 (Statement HAEFLIGER record G.p.9732, E.p.9580).

d) The case Francolor (and the matter of the Dye Plant Millhouse) was handled in legal respect exclusively by Legal ~~Department~~^{Department} Farben - Dr. KUEPPER (KUEPPER record G.p.6053, E.p.5998; KUGLER record G.p. 13177, E.p.12834; von HOSPATT record G.p.13359, E.p.13032; and the two documents presented by the Prosecution to KUGLER during his cross-examination, Exh. 2150 NI-15218 and Exh. 2149 NI-15219, which - just as the other numerous documents of this case - never reached v.K.'s knowledge). This is clearly evident also from all what tor MESSER stated in relation to this complex (record G.pp.13299/379, E.pp.13005/51). As for the questioning of v.K., in particular with regard to the exchange of experience and to the picture which emerged for v.K. as a result of the report at the Vorstand conference, compare statement v.K. record G.pp.6724, 6727/28, E.pp.6601, 6303/04.

The legal cooperation in the Rhine-Pulenc case lay with the Leverkusen legal department, that is to say Dr. RUECHSCHAEN, v. KERNER's fellow-member of the Vorstand, as disclosed by the entire defense of RECKEN with respect to this complexity of questions.

As regards the Alsace-Lorraine Oxygen Works (*Chemische* ~~Sauerstoffwerke~~), the legal department of ~~Saarbrücken~~ Frankfurt/Main,

Dr. MAYER-SEGELIN, had exclusively to deal with this matter (affidavit

MAYER-SEGELIN, HANFLINGER Exh. 38, Doc. No. 45, Book 3, p. 56; statement

MAYER-SEGELIN, G.Tr. p. 3097/3117, S.p. 3077/80; HANFLINGER, G.p. 9296, S.p. 9193/94; JAKOB, G.Tr. p. 10060, S.p. 9924/25.)

e) As regards Russia in general, it is emphasized again that the discussions in the legal committee on 2 October 40 did not of course, deal with Russia at all; The Russian campaign started on 22 June 41 (statement v. KERNER, G.Tr. p. 6824, S.p. 6703).

With respect to the Chemie Ost G.m.b.H., the following may be said: v. KERNER and the Berlin No. 7 legal department which cooperated with him in this field only dealt with questions of Corporate Law with respect to the statutes of limited liability companies (statement v. KERNER, G.Tr. p. 6725, S.p. 6602). For the rest, the IG was neither a founder of the Chemie Ost G.m.b.H., nor did it hold shares to a considerable amount, but had only minor holdings the same as the other chemical industry.

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~~GILBERT~~, ~~Attorney-at-Law~~
Dr. von KILBING - Closing Brief

The Chemie Ost G.m.b.H. was not to take over or operate chemical plants in Russia, but was only to be the go-between and to give assistance for the operating (affidavit Besarge ILGER, Exh. 164, Doc. No. 163, Book 9, p. 2).

Legal matters relating to the Synthese-Kautschuk Ost G.m.b.H. were dealt with by the Ludwigshafen legal department, but not with direct co-operation of von KILBING who ~~was to provide~~ ^{only once provided} the second signature, which was obligatory under commercial law, and ~~also~~ ^{then} received copies of file notations. Neither did v. KILBING take part in any discussion of this matter. For the rest, the whole complexity of the Synthese-Kautschuk Ost G.m.b.H. was so impractical as can only be imagined and became stuck already at the initial phase; the contract with the Reich ~~is not mentioned~~ ^{is not mentioned}, the letter in question was not written by the Reich Ministry of Economics, the limited liability company did not become a reality and was not even formally founded, and no Buna plant was found at all in Russia (statement v. KILBING, G.Tr. p. 6725, E.p. 6602/03; statement AMEROS to whose defense we refer for the rest, G.Tr. 8097/100, E.p. 8022/25.)

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Part IV.

- Count III. -

(Reply to the Preliminary Memorandum Brief of the Prosecution:
Part III, "Slavery and Mass Murders", as on page I - 115, G. and E.-
of the Brief of the Prosecution).

The Prosecution Brief Part IV "General theory of the responsibility" asserts that

- 1) the Technical Committee frequently submitted to the Vorstand entire programs - "involving slave labor" - for its consent, that
- 2) some of the defendants headed IG-plants and corporations which employed slave labor, and that
- 3) some of the defendants had special responsibilities in this field. "which fact ~~by~~ ^{has not} lessened the extent of the participation in or the knowledge of such activities on the part of all the members of the Vorstand". (Part IV, p.11-12).

Von KNIEREM was not among the defendants mentioned in points 2 and 3. For this reason, any responsibility ^{of} von KNIEREM can only result from the reasons stated for substantiating point 1, or from the general addendum: "which fact ~~by~~ ^{has not} lessened...."

But this reasoning of the Prosecution is wrong.

As a basic element of the objective facts it may be stated primarily that the foreign workers had to be employed upon orders of the German Government, and that the extenuating reason of the state of emergency applies to all the defendants according to the evidence presented in this case, too. Tribunal IV, in the case V (USA versus FLICK et al.) in the judgment of 22 December 1947, has given extensive reasons in this respect (see G.T. p. 10728-10736, S.p. 10986-10995).

"Workers were allocated to the enterprises

which needed then by the employment offices of the government. No management was in a position to oppose such allocations."

Furthermore, the Defense for von KNIERIM refers to all elaborations made for the defense of the defendants who come under point 2 and 3. The assertion of the Prosecution under point 1, namely the submission of entire programs - "including slave labor" on the part of the Technical Committee must be checked with respect to its actual correctness and to its significance for the knowledge and the participation of every single member of the Vorstand.

Not in one single case it has been proved by the Prosecution that the employment of foreign workers by the IG plants was basically discussed in the Vorstand. (see statement KNIERIM, G.Tr. of 31 March, p. 10359, E. 10223).

The Prosecution merely asserts that entire programs - "involving slave labor" were submitted. The expression "entire programs - involving slave labor" as used by the Prosecution is very vague and leaves the decisive question open whether it was possible for all the members of the Vorstand to discern that the compulsory employment of foreign workers would be a consequence of the carrying out of these programs which were new production programs, the erection of new plants, etc.

The examples set forth in the Prosecution Preliminary Memorandum Brief, Part III, subsection II B, "knowledge of involuntary slavery", on page 8 - 14, only show - even according to the assertion of the Prosecution - that intimations relating to the employment of foreign workers went no farther than to the committees (TEA, TEKO) and thus to some individual members of the Vorstand, when preparations were made for the effectuation of loans.

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~~SILVER, Attorney-at-Law~~
Dr. von KRIEGER Closing Brief

But to establish the guilt of the individual members of the Vorstand the question is of paramount importance whether on the occasion of such reports before a committee and further of a report in the Vorstand concerning a matter which had been decided upon by the committee, details of such pertinent questions were mentioned by the member of the Vorstand competent for this field or could be understood by the other members of the committee or of the Vorstand.

Such a detail is for instance/question whether the foreign laborers came to Germany voluntarily or under compulsion.

How much the report of a matter already discussed in a committee was condensed to the most essential facts by a member of the Vorstand and how the same principle was applied out of necessity in the committee, is convincingly proved by the statement of von KRIEGER in his affidavit Defense Exh. 170, von KRIEGER, Doc. Nr. 34, Book 5, under section III and V (p. 298-301-306). That this method corresponded to the general usage of all great companies and that it does not imply a violation of the duties by a member of the Vorstand, is proved by the hearing of the expert opinion of the witness LANGERS (Transcript of 30 January 1948, G.p. 5703-5711, E.p. 5583-5665), KASTL, (transcript of 21 January 1948, G.p. 5771-5774, E.p. 5732-5734) and by the written opinion of Dr. Walter SCHMIDT, defense Exh. 280, von KRIEGER Doc. 39 and Prof. MEYER, Defense Exh. 281/82, von KRIEGER Doc.

40 and 41, supplementary Volume.

For the rest see Closing Brief concerning the responsibility of the Vorstand-members. (page 94-99)

It is therefore absolutely credible when von KNIERIEM admitted knowing of the employment of foreign laborers in the I.G. but denied the question that he knew of the compulsion under which a part of the foreign laborers had come to Germany (see statement von KNIERIEM, transcript of 9 February 1948, German page 6730, Engl. page 6606).

The testimony of von KNIERIEM, that details of the recruitment of foreign laborers had not been discussed in the Vorstand has not been refuted by the Prosecution. It was confirmed by KUEHNE (Transcript of 31 March 1948, German page 10359, Engl. page 10223) OSTER (Transcript of 7 April 1948, German page 10397-10901, Engl. page 10750-10755) MANN (Transcript of 3 April 1948, German page 10713/14, Engl. p. 10573/74).

That these questions of recruitment were affairs of the plant ~~leaders~~ ^{leaders} and plant-directors was also testified to by the defendants SCHNEIDER and KUEHNE on the witness stand (Transcript of 19 February 1948, German page 7459/66, Engl. page 7393-7401 and transcript of 31 March 1948, German page 10358/9, Engl. page 10224/5 and of 25 March 1948, German page 10232/3, Engl. page 10094-10097).

The regular report of the Chief-plant ~~leader~~ ^{leader} SCHNEIDER to the Vorstand "if important basic decisions had been made pertaining to social questions", Prosecution Exhibit 1328, NI-6843, Book 63, Trial Brief part III page 20, did not include questions of foreign laborers. Considering the position and the field of activity of von KNIERIEM in the Vorstand and in the I.G. he did not have cause nor was it his duty to inquire of his own, For details with regard to the recruitment and employment of foreign

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laborers. He was a large and quite clearly defined field of activity, which defined also his task in the Vorstand (see Part I, Section D III, I "Position in the I.G." of this Closing Brief, page 17-19). It did not include questions concerning laborers or commitment of laborers. Nor had the legal department of the local plants and sales combines anything to do with questions of labor commitment. This was a matter of the Social and Personnel departments and at the top of the plant ~~_____~~ ^{Leaders} (statement EUEHTE, transcript of 31 March 1948, German page 10358/9, English page 10234/5).

This applies also to Ludwigshafen and Farbwerk Frankfurt. The Social Department Ludwigshafen, which was competent for questions of labor commitment, was headed by Dr. WEISS, a first class lawyer and expert on labor law. The legal committee under von KNIERIM definitely did not concern itself with questions of labor commitment either (see this Closing Brief, Part I, Par. D III 3, page 23-24).

KNIERIM had nothing to do with discussions of the plant ~~_____~~ ^{Leaders} and the advisory council of the enterprise (see this Closing Brief Part I, Par. D III, 6, page 25-26). Nor does the Memorandum Brief of the Prosecution name him amongst those participating in the conferences. Nor does the irregular participation of von KNIERIM in the meetings of the TFA as guest since 1939/40 prove that by those means he had gained more detailed information on labor questions and that thus he might have ^{been} obligated to follow them up.

(See this Closing Brief part I, Par. D, III, 4 and 5, page 23/25).

In view of this - as has been explained by all the experts

- necessary distribution of work and the limitation of von KNIEREM's duties to the handling of definite legal problems, the expositions in the Brief of the Prosecution for the purpose of establishing criminal guilt of the Defendant von KNIEREM are not sufficient. It is not sufficient if the Prosecution in Part III under figure 20, page 13-14, pertaining to the example cited of the treatment of applications for credit for the housing of the Russian laborers, states: "..... every member of the Vorstand, who did not know the details could easily get hold of them". Of importance is whether he had to get hold of these details. The point in question is therefore whether there was cause, reason, justified suspicion for a member of the Vorstand to get hold of the data and not to be satisfied with what he heard in the meetings be it of the Vorstand or of the committee. In this respect, however, the Prosecution was unable to bring anything to light from the entire evidence material against von KNIEREM which could substantiate the claim that such was his duty.

Insofar as concerns the question of commitment of prisoners of war and concentration camp inmates I refer in individual cases to the expositions of the defense of the other defendants.

The refutation of the general thesis of the Prosecution concerning the criminal guilt of the defendant applies also to the charges of the Prosecution in the Trial Brief Part III figure II F and G (examples of slave labor commitment in I.G. plants, mistreatment and degradation of foreign laborers) figure III (delivery of poison gas for mass extermination)

Subsection IV (Participation in criminal medical experiments) and subsection V (The IG in Auschwitz).

In detail, the result of the presentation of the evidence is as follows:

Von KNIERIEM had no knowledge of the fact that foreign workers were treated badly in the I.G. plants, and to this day thinks that it is not possible.

This lack of knowledge is not due to the fact that he, although he was not concerned with all these questions, shut his eyes to any possible abuses, but rather to the fact that nothing met his eye which might have attracted his attention and caused him to make further investigations.

(Record of 9 February 1948, German pages 6731 and 6735, English pages 6608, 6612/13).

The same applies to the employment of Prisoners of War; von KNIERIEM knew of it and for a variety of reasons could legitimately assume that this employment was permissible. Moreover, here, too, - in a sphere which was also outside his province - no abuses met his eye. (Record of 9 February 1948, German pages 6731-32, English pages 6608/9).

In subsections III and IV (page 32 and following pages, and page 60 and following pages of the Trial Brief, Part III), the Prosecution offers no proof whatever against von KNIERIEM; also in dealing with his line of defense it could only fall back on its general theory of "possibility of investigations" and "shutting both eyes" which has been refuted in the foregoing. That Dr. von KNIERIEM neither knew nor suspected anything of poison gas deliveries, that

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he did not even know the name of "Cyklon" that he had no knowledge of experiments on prisoners, all that he stated in the witness box without being refuted. Having regard to the organization and the distribution of responsibilities in the I.G. as outlined in the introduction of this Closing Brief, he also denied the possibility of such things coming within his view at all, even supposing that they had actually happened with the deliberate participation of I.G. employees, a possibility which he denies. (Record of 9 February 1948, German pages 6733-35, English pages 5610/13).

Reference is herewith made to the contents of the Closing Briefs for Mann in the case of the "Dagmar" and for KUNZE and LUTEN-SCHLAGER in the other cases.

Nor did the Prosecution contend that there existed any special responsibility on the part of von KUNZE in regard to the employment and treatment of KZ inmates during the construction of the Auschwitz plant. (Brief Part III subsection V, 8 pages 105-106), but only referred to its theory of collective responsibility which has been refuted already.

In the witness box Dr. von KUNZE deposed - and it should be noted that the Prosecution so far never made any statement to that effect (see Brief Part III, page 106) - that at one time he had a look at the Auschwitz plant then under construction, the visit being an incidental one (which has not been disproved), because technically he had nothing to do with these questions. It was on that occasion that he learnt of KZ inmates being employed in this construction, and having noticed nothing particular about them he believed that their employment there, - apart from the necessity existing for the I.G. - meant an alleviation of their fate as compared with the life they

~~page~~ page 6712-33

had in camp (Record of 9 February 1948, English page 6609/10).

The Prosecution, however, has not been able to prove that von KNISERIE previously knew of the employment of KZ inmates, that he knew how and at whose instructions they were employed, and that the treatment in the plant had been inhuman, which is being emphatically denied.

Even if the collective responsibility theory of the Prosecution is accepted, the justifiable reason of necessity must be claimed for von KNISERIE on this point as well. The existence of these conditions owing to a government order and the unavoidable necessity of the employment of KZ inmates has been proved in detail by the defense (Plea and Closing Brief) of other defendants.

The scantiness of the special references in the indictment and the Trial Brief to Dr. von KNISERIE on counts II and III necessarily results in the brevity of the argumentation of the defense on those counts in this Closing Brief. Thus it is proved conclusively that a criminal responsibility of Dr. von KNISERIE cannot be assumed if for no other reason than because he is not technically involved in the charges made there. The Prosecution cannot prove a connection between the particular spheres of work of von KNISERIE and those questions. What these spheres of work of von KNISERIE were like has been told exhaustively in Part I, section D, pages 17/26, of this Closing Brief; they were large, important and involved great responsibility.

By their very nature, however, they were unrelated to the matters dealt with in counts II and III. As regards count II, it can be explained by the fact that business policies in the occupied territories abroad were essentially a concern of the ~~business~~^{sales} managers of the IG; the Legal Department Ludwigshafen, however, had hardly anything to do with ~~business~~^{sales} questions, because as a matter of fact there were no commercial departments in Ludwigshafen. As regards the whole of the labor questions, the explanation is to be found in the fact that according to the I.G. practice these were never dealt with by the Legal Departments, but by the Social Relations and/or the Workers and Employees Relation Offices which were subordinated to the respective plant ~~leader~~^{leader} concerned. The fact that (compare von KNIERIM in direct Interrogation Record of 5 February 1948, German page 6538, English page 6485-86) practically every transaction within a company has, in theory, also a legal aspect cannot change anything.

Only in Count I actual relations with Dr. von KNIERIM's particular spheres of work can be found. That this activity of von KNIERIM did not involve any deliberate furtherance in any shape or form of HITLER's plans for an aggressive war has been proved in Part II, page 27 - 77, of this Closing Brief.

Part V

Responsibility of the Members of the Vorstand

(Preliminary Memorandum Brief of the Prosecution Part VI)

I. Above all, the defense takes the view that there had been no crimes or abuses in the I.G., in particular none of the crimes under indictment in these proceedings. But even supposing there had been, no guilt of the indicted members of the Vorstand can be based on the mere fact that they were members of the Vorstand. So far as that is concerned one of the central problems of this trial is how the distribution of business among the members of the Vorstand was regulated and how it worked out in practice, and the legal meaning this has. This problem of the responsibility of the members of the Vorstand is here being dealt with as general subject by arrangement among the defense counsels.

A very clear and distinct picture of the regulation and the practical handling in this point - if only mosaic-fashion in many details - unfolded itself as the trial progressed. Moreover, two legal opinions, of first authorities in these questions, designated as Defense Exh.280 v.I., Doc.No.39 and Defense Exh.281/82 v.I., Doc.40/41, have been presented. The defense, therefore, is of the opinion

that no lengthy expositions on its part are needed, and contents itself with a reference to the various quotations adduced as proofs, and a short summary of the results.

- II. A basis is supplied by the two successive acts of standing rules of the Vorstand, the one of 1926, Defense Exh. ¹⁶⁸ v.K. Doc.No. 27 Vol.4 page 361 and the other of 1937/38 Defense Exh.169 v.K. Doc.No.28 Vol.4, page 269, both of which were issued by the competent Aufsichtsrat.

As regards the actual regulation and handling of the distribution of assignments and the responsibility within the Vorstand, Affidavit v.K. Defense Exh.170 v.K. Doc.No.34 Vol. 5, page 292 supplies the basis. In supplementation thereto, attention is called to Affidavit JACOBI Defense Exh.171 v.K. Doc.No.35, Vol.5, page 307 and Affidavit Pieter OSTER v.K. Doc.No.16, Vol.2, page 42.

How the Vorstand business was distributed in detail is obvious from interrogation or affidavit of each of the indicted members of the Vorstand, as each of them gave an account of his particular sphere of work. Having regard to this, individual references are being dispensed with. Listed hereunder are only a few statements of members of the Vorstand, amongst them also former members of the Vorstand, which offer a particularly lucid explanation of the actual functioning of the distribution of business, the history of the Vorstand meetings, etc.,

and which give a particularly graphic description of the structure and the working methods of the Vorstand.

HOERLEIN Affidavit Exh.5 Doc.No.43 Vol.1, page 1 and deposition Record German page 6202/03, English page 6145/47, and German page 6259/60, English page 6203/04.

for KETZ Record German page 6865/97 and 7227/28,

English page 6759/71, 7169/70, German page 7243/48 and 7300/02,

English page 7184/88, 7241/43.

Ambros Record German page 8095/97, English page 8021/22.

ILCHER Record German page 9404/08, English page 9253/57.

KUEHN Record German page 10233/34, 10236, English page 10094/96,

10099/100.

MAIER Record German page 10431/33 and 10723, English page 10296/97,

10583.

OSTER Record German page 10933 English page 10785/86.

LUNSTEL Affidavit Exh.30 Doc.No.304 Vol.1, page 37 (34).

Furthermore Affidavit v.HEIDEN HANFLITZEL Exh.13, Doc.No.30,

Vol.1, page 42.

Statements are made by the expert witnesses LANGERS Record German

page 5700/11, English page 5552/73 and Kautl Record German page

~~5742~~⁵⁷⁴²/73, English page 5728/34 partly on the actual handling

in the IG, partly on the general practice in regard to this point

in the major German stock companies with complex Vorstände.

Attorney-at-Law and Notary Dr. Walter SCHMIDT, Berlin, whose opinion is being presented as Defense Exh. 280 v.K. Doc.No.39, is a leading and internationally recognized authority in the field of stock ~~company~~ laws, as demonstrated by the statements in the introduction of the opinion.

Experience and authority of Professor Dr. Edmund MEYER, Munich, whose opinion is submitted as Defense Exh. 281 v.K. Doc.No.40, are reflected in the excerpt from the proceedings of the Bavarian Academy of Sciences, 1944/46 Issue 9, introduced as Defense Exh. 282 v.K. Doc.No.41.

The defense appropriates for itself the contents of these two opinions.

- III. The result of the evidence presented in relation to this point including the opinions may be summed up in the following principles:
- 1) There is no such thing as collective responsibility in criminal law. Criminal guilt can only be personal guilt.
 - 2) The crime under indictment, whatever the form of participation, can only be committed deliberately.
 - 3) In the major German stock companies with common Vorstand a distribution of the business

was permissible and generally practiced. With the IG this practice was very extensive and pronounced, and this was as necessary as it was permissible.

- 4) There existed no legal duty, nor was it even possible or permissible for any member of the Vorstand, regularly to check on the management of his colleagues, unless there was a special reason to do so. Normally, everyone could act on the assumption that the course of action adopted by his colleagues was correct, the more so in view of the careful selection of all members of the Vorstand. Each member of the Vorstand was kept more than busy by the work in his own sphere and his foremost duty was to perform his own tasks as well and as completely as possible.
- 5) Nor did reports and resolutions in the plenary Vorstand, TEA (Technical Committee) and KA (Commercial Committee) disclose anything beyond what was obvious from the report and the discussion. Moreover, it had to be assumed that the experience of the reporter and his acquaintance with the matter in hand was superior to that of his colleagues.
- 6) It has not been proved that in any particular case there existed concrete clues or circumstances or any reason traceable to the general aspect of a particular personality why any particular actions which subsequently, in the present trial, came under indictment should have been regarded as doubtful and checked accordingly. There exists, therefore, no case of an undutiful neglect of supervision or proper action.

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SIDGHER, Attorney-at-Law
Dr. von KNIERIEM - Closing Brief

and, consequently, no case of "shutting their eyes".

- 7) But even assuming that there had been an undutiful neglect of supervision or proper action, it could be regarded, at the most, as negligence, not as intent (see 2).

Even "shutting the eyes" could not lead to a conviction unless it intentionally and deliberately aided another person's punishable offense.

- 8) In no case, therefore, there exists a criminal guilt of the other defendants, even supposing that - contrary to the conviction of the defense - something punishable should be found in individual acts of individual and directly involved defendants.

Pelckmann

CERTIFICATE OF TRANSLATION

17 June 1948

We hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of the document - Closing Brief KNIERIM.

Hildegard L. FIRTTEL, ETO 17 415, (pages 55-62; 75-81)

.....

Gerhard FIECHER, ETO 17 397, (pages 31-33; 75-77; 82-85)

.....

Rosl GETHU, ETO 45 672, (pages 5-11; 20-23; 45-47; 52-54; 67-70; 86-89)

.....

Paul E. GROFF, JCO B 397 975, (pages 1-7; 16-19; 27-30; 38-41; 55-58; 63-66)

.....

Alfred OBERLÄNDER, ETO 20 152, (pages 12-13; 42-44; 90-99)

.....

Hanna Maria NICHTENLAUSER, JCO B 397 989, (pages 24-26; 34-37; 48-51)

.....

Hans NICHTENLAUSER, ETO 20 113, (pages 24-26; 34-37; 48-51; 71-74)

.....

Leslie Brown Krauch
(February)

CLOSING BRIEF KRAUCH

Military Tribunal No. VI

Case VI

CLOSING - LETTER (Translatorsaic)

for

Prof. Dr. Carl KRAUCH

Nuremberg, 25 May 1948

submitted by his
Defense Counsel
Dr. Conrad OETTINGER
Attorney at law

Corrected, von Rapp, 7/17/48



CLOSING BRIEF KRAUCH

Military Tribunal No. VI

Case VI

CLOSING-LETTER (Translator'ssic)

for

Prof. Dr. Carl KRAUCH

Nuremberg, 25 May 1948

submitted by his
Defense Counsel
Dr. Conrad OETCHER
Attorney at law

Corrected, von Rupp, 11/7/48



Closing Letter

When drawing up this closing letter on behalf of Dr. KRAUCH, it has not been my purpose to make it an amplification of the final plea. I rather intended to recapitulate with the utmost terseness the tremendous material in a logical order, thus furnishing the Tribunal with a kind of index listing the points of view held by the defense with regard to the various issues. I have deliberately refrained from connecting the individual points by a consecutive text.

The arrangement of the closing letter is the following:

First Part:

Terse comment - by way of catchwords only - the individual issues involved in counts I, II, III and V of the indictment; in every case, reference is made to the pertinent material contained in the presentation of the defense on behalf of KRAUCH and in the presentation of the defense on behalf of the other defendants.

Second Part:

Terse comment on all documents which can possibly involve the case of Dr. KRAUCH.

Third Part:

- 1.) Index arranged according to subject matters;
- 2.) Alphabetical index - by way of catchwords - concerning all points of importance dealt with in the closing letter;
- 3.) Index of abbreviations used in the closing letter.

CLOSING BRIEF KRAUCH

First Part: Terec comment - by catchwords only - on the individual issues involved in counts I, II, III and IV of the indictment; in every case, reference is made to the pertinent material contained in the presentation of the defense on behalf of KRAUCH and in the presentation of the defense on behalf of the other defendants.

First Para.: Count I of the indictment - War of Aggression

T2 Sub-para. 1: Preparation of Wars of Aggression

1. No proof for the assertion of the prosecution, on the contrary this assertion has been disproved.
2. FBI page 9 refers to the inner (subjective) and external (objective) elements. This order is followed by the defense.
3. Principle: The I'T judgment is the basis for the interpretation of the defense. The fact that K worked, among other things, ^{also} ~~for~~ ^{in benefit} the re-armament is no proof that K is guilty of having participated in the preparation of aggressive wars.
4. According to the I'T judgment the following subjective element must prevail:
Quotation: "Knowledge of his aims". End of quotation, page 226 English version.
K could have gained knowledge of these aims either by:
a) participating in the secret meetings or
b) by gaining knowledge through other channels of the plans and aims which Hitler made public during these meetings.

The prosecution has submitted no proof for any of these two facts.

T7

5 The objective element presupposes an activity of decisive importance.

This pre-supposition does not prevail. Cf. T7 37.

1) Compilation of facts which show clearly the lack of the subjective element.

I. No proof that K was informed or had knowledge of Hitler's plans of aggression.

- 6 1.) K did not belong to the close circle of persons who were informed of Hitler's plans of aggression. K saw Hitler on one occasion only and that only in 1944 (11). DE - DfS 5107, EPs 5088.
- 7 2.) There is no proof for the assertion of the prosecution (DfS 130, EPs 121), that K had been Goering's "right hand" and therefore had been informed of the "plan of aggression". The taking of evidence showed the contrary of this assertion. In eight to nine years only twelve to 15 personal meetings of K with Goering:

DE - DfS 5107, EPs 5087
 Statement Hilch : DfS 5324, EPs 5300/01
 " Goernert: DfS 9348/49
 EPs 9292/93.

The so-called "right hand", however, is a constant companion. Cf. T7 39/41 concerning the comparison of K's position with that of the Chief of Staff of an Army.

T2

The fact that Goering assured K even in summer 1939 that there would be no war shows how clever Goering concealed his plans of aggression from K: DE - DPS 5165, TF 5142. This behaviour corresponded also to Hitler's camouflaging of his true aims. Cf. details T 16.

8

3.) The fact that K was not informed of the plans of aggression is easily explained because Hitler, Goering and his conspirators acknowledged K as an excellent scientist, but did not trust him as far as the political field was concerned.

9

Proof for this distrust:

- a) Domiciliary inspection at K by the SD:
DE - DPS 5464, TF 5434, Nr. Exh. 38,
Pd. 2, S. 52;
- b) Secret search of K's office by the Gestapo:
DE - DPS 5484, TF 5452;
- c) Statements of Himmler to the effect that according to SD reports K's attitude towards the Third Reich was an invasive one, if not a negative one:

Statement Schickel	:	DPS 5298, TF 5267,
" Goernert	:	DPS 9347/48 TF 9291.

These SD reports referred erroneously to the fact that K's attitude was completely contrary to the Nazi Ideology, especially his attitude ...

T2

9a To freedom and independence of scientific research:

Kr. Exhibit	142,	Volume	7	Page	16
"	"	143	"	7	" 25
"	"	144	"	7	" 38
"	"	148	"	7	" 50
"	"	149	"	7	" 53
"	"	150	"	7	" 57
"	"	151	"	7	" 66
"	"	152	"	7	" 68
"	"	153	"	7	" 71
"	"	154	"	7	" 73
"	"	155	"	7	" 77
"	"	156	"	7	" 80
"	"	157	"	7	" 85
"	"	158	"	7	" 88
"	"	176	"	9	" 58

9b To the Jewish question:

Kr. Exhibit	125,	Volume	6	Page	77
"	"	126,	"	6	" 79
"	"	127	"	6	" 82
"	"	128	"	6	" 85
"	"	129	"	6	" 90
"	"	130	"	6	" 92
"	"	131	"	6	" 93
"	"	132	"	6	" 94
"	"	133	"	6	" 96
"	"	134	"	6	" 99
"	"	199	"	9	" 119
"	"	204	"	9	suppl. 2

To the attitude towards persons with different political ideas and political persecutions:

Kr. Exhibit	135,	Volume	7	Page	1
"	"	136	"	7	" 3
"	"	159	"	8	" 1
"	"	165	"	8	" 35

9c Towards the Church:

Kr. Exhibit	137,	Volume	7	Page	5
"	"	138	"	7	" 8
"	"	139	"	7	" 10
"	"	140	"	7	" 12

d) Bauer, the Chief of ^{Dept.} ~~Office~~ II in the Reich Economic Office ^(RWA) as political "Supervisor":

Kr. Exh. 18, Volume 1, Page 29;

e) Remarks made by Bornemann to the effect that K's position as Reichskommissar was not satisfactory for the Party on account of K's International connections:

Statement Schickel DE 5292,
EP 5266/67.

T7

- f) Hitler considered the IG (Especially on account of the collaboration with the USA for which K was mainly responsible) as too international:

Statement Milch : DPS 5337, ETS 5312
 " Schicker : DPS 5292, ETS 5266/67.

- g) The government prohibited to inform about atomic experiments: DE - DPS 5279, ETS 5145, 5146.

Connected with this are also the facts that

- aa) K refused to become a member of the circle of friends of Himmler: Kr. Exh. 141, Volume 7, Page 14;
 bb) K rejected the request of the party to accept prominent Nazis in the Vorstand or Aufsichtsrat of the IG: DE-DPS 5178, ETS 5154/55;
 cc) K sabotaged the secret-class destruction of factory installations orders by Hitler when the end of the war approached: Kr. Exh. 54, Volume 3, Page 36; Kr. Exh. 167, Volume 8, Page 140.

- 10 4.) The following points which were especially emphasized by the prosecution are certainly no proof for the fact that K had been informed of aggressive intentions:

- 11 a) K's participation in the conference at the Freussen house in December 1936: Several hundred industrialists participated in the conference. Goerlin's subject: Defense against the threatening Bolsheviks, but not aggressive intentions.

T2

Prosecution Exhibit 421, Volume 20, TS 58, ES 9
DE - TFS 5162, TFS 5136/37.

Schmiteler Exhibit 13, volume 1, page 20 shows that this conference was not, as assumed by prosecution exhibit 422, volume 20, DE 68, TS 14, "Highly Confidential": Publication of the speeches made during the conference in the "Völkischen Beobachter" of 19 December 1936.

- 12 b) Participation in the conference at the Reich Ministry for Aviation: October 1938.

Gossine's "unreliable illustration":

Prosecution Exh. 401, volume 19, Page 81
DE - DFS 5161, TFS 5137.

- 13 c) Hitler's memorandum of 1936 about the Four Year Plans:

Until 1946 unknown to K: DE - DFS 5103, TFS 5083.

Moreover does not contain any aggressive intentions but again defense against the threatening Bolsheviks:

Pros. Exh. 411, volume 19, DE 129, TS 93
DE - DFS 5103, TFS 5083.

- 14 d) Memorandum concerning Attack on Russia:

also unknown to K:

Pros. Exh. 471, volume 22, DE 7, ES 7
DE - DFS 5168, TFS 5144.

- 15 a) General Committee Report April 1939:

(Pros. Exh. 455, volume 21, DE 89, TS 56)

General Committee Report April 1939 is a normal work report of the expert Krauch (cf. T2 61). No proof for political statements at the end of this report.

Kr. Exh. 36, volume 2, S 48,
" " 37, " 2 " 50

T2

16

- f) X's knowledge about rearmament, and to a certain extent its support by advisory activity:

This is not a proof for X's knowledge of Hitler's aggressive intentions, X was of the opinion that rearmament was a means in order to prevent - in case Germany remained a military vacuum - a threatening attack of Poland.

DE - DPs 5066, DPs 5045
 DPs 5148, DPs 5124/25.

This idea was not only justified on account of the development in the field of foreign policy but especially also on account of the development in the field of domestic policy (in 1932 every 6th (/) German voted for Communism), moreover the government put this idea in the foreground wherever possible.

Statement Hilch : DPs 5352, 5359,
 DPs 5326, 5332,

" Fritsche: DPs 13678, 13699
 DPs 13381, 13402

Hitler's peace assurances in the OK document books:

Defense Exhibit 55-98, "German Foreign Policy"

Part I, pages 5-131.

17

- g) The point of view emphasized by the prosecution in TB I no 36, no 36, that X should have concluded from the fact that in 1938 Germany's argument was that of the neighbor states that Hitler aimed for a war of aggression is wrong.

17

as movement, in which they are participating by their work, exceeds, in the opinion of the prosecution, the permissible limit. Thus crimes consisting of preparation of aggressive wars would not be a clearly defined element, but solely an element based on the subjective opinion of a prosecution. This is contrary to the legal principles adhered to by all civilized nations.

18

Assertion of the prosecution that K should have recognized the aggressive intentions, because Schacht too has recognized them (T-1, D-21, SS 21) is ~~clearly~~ ^{basically} wrong, because the IMT judgment established that Schacht had no knowledge. Moreover, K's position cannot be compared to that of Schacht. Schacht had held the position of Minister, as such he was able to overlook the entire armament sector, while K on the other hand not only relatively but also absolutely could overlook a small part of armament only, namely only of parts of the chemical production, the so-called "Special Functions":

Proc. Exh. 2239, volume 94, D-37, SS 41
D-5241, EPS 5210.

Summary:

Therefore there exists no proof that K had the knowledge, as required by the IMT judgment, of Hitler's aggressive plans.

19

5.) Deviating from the IMT judgment the prosecution represents the theory that a knowledge of the intentions of the government would be sufficient for the subjective element:

17

- (1) To pursue a policy of expansion in the frame of which it would threaten to use force, and
- (2) in the case that the others would not give way to this threat actually to use force.
Cf. answer of the prosecution of 5 January 1948, DS 7, SS 7, to the action of the defense of 17 December 1947.

Even if one accepts this theory the prosecution has submitted no proof that the pre-requisites required in accordance with this theory actually exist.

20

e) I did not believe that the armament would be used for threats or applying of force for the purpose of achieving a revision of the Versailles Treaty; on the contrary, he thought that it would be possible to revise the Versailles Treaty by way of a peaceful understanding:

DF - DFR 5103, ETS 5084,
CF - DFR 5469/71, ETS 5439/41.

That this idea is actually justified is shown by the fact that the foreign countries too had voiced this very same opinion more and more often:

CF - DFR 5471, ETS 5441,
Def.Exh. 53 and 54, CX-Document volume
"German Foreign Policy" Part I,
Duerfied-Exh. 427, 429, 432-435,
440, 441, 446, Doc. Volume 18.

According to his entire way of life K accepted Hitler's continuous peace resolutions because he, as a convinced researcher and scientist, searched for fulfillment in the field of the ^{spiritual} ~~careful~~/competition ~~of~~ intellects:

17

DE - DPF 5155, EPS 5130/31
Prosec. Exh. 22, volume 20, DS 123, ES 126.

21

b) The prosecution itself (1) points out that Hitler had succeeded to deceive even Poland, the country which was more endangered than any other country, so that she did not realize his aggressive intentions and to make it believe that it was safe: TB I, DS 84a, ES 84. *Even the less* ~~Thus~~ K did not recognize Hitler's intention. For did I conclude from the union of Austria and the Sudeten country and from the fact that Bohemia and Moravia was transformed into a protectorate that the government had the intention to threaten other countries with force, in particular Poland, and if necessary, even to apply force; he was not able to conclude that because Goering, even in July 1939, a short time prior to the outbreak of the war, assured him that there would be no war:

DE - DPF 5165, EPS 5142,

Statement Milch : DPF 5356, EPS 5330
" Hoenemann : DPF 13793, EPS 13499

Def. Exh. 152-154, CX-Mount volume
"German Foreign Policy", Part III
Page 17-25,

Statement Tann : DPF 11691, EPS 11589
" Schindler : DPF 12546,
EPS 12342.

Thus statement Schmidt: DPF 1516/1581, EPS 1537/99,
is also contradicted.

22

Summary:

Accordingly

(1) it is not proved that I believed that the government would pursue a policy of expansion by threatening to apply force.

17

In addition there is no

- (2) proof that X was of the opinion that the government would apply force if necessary.

Thus, even if the theory represented by the prosecution which deviates from the IOT, is taken as basis, the subjective element for a participating in the preparation of a war of aggression is missing.

II. Acts of X which cannot be brought in line with intentions of aggressive war, which thus permit only one conclusion, namely that X did not think of a war of aggression: Thus the defense submits a positive proof for the missing of the subjective element.

23

- 1.) Inspection of the installations which X in his capacity of Colonel supervised according to commercial but not to military points of view:

DF - DPS 5152, 5426; EPS 5127, 5395,
Kr. Fdh. 27, volume 2, page 13
" " 28 " 2 " 15
" " 29 " 2 " 17

Especially striking examples for this fact:

24

- a) Plants were highly exposed to air attacks. Destruction of the Hydro and Buna plants ^{by air raids.} For this X was severely reproached by Goering in Hitler's presence in May 1944. X was incriminated by Hitler on account of this; Goeltenberg was appointed to Special Commissioner with real authority to issue orders which X never had:

DF - DPS 5152, 5426; EPS 5127, 5395
Statement Hlch: DPS 5334/35, EPS 5310/11
Kr. Fdh. 31, volume 2, page 28
" " 17 " 1, " 75

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25

- b) Erecting the Hydro plant Masselink in the immediate vicinity of the Western border and expansion of the plant Mithernie which was also in the vicinity of the border without consideration to the danger from the air which could arise from attacks by the French and British air forces.

Result: Stalling of production at the outbreak of the war:

DE - DPF 5152, EPS 5128
Fr. Exh. 29, volume 2, page 23

26

- c) Technical plans for the Hydro plant Blackheimmer - it was intended to start construction on 1 September 1939 - were drawn up according to peace-time points of view. After the outbreak of the war, order OKV to amend technical plans by taking into consideration the requirements for air raid protection. This caused a delay in the starting of production of half a year:

DE - DPF 5152, EPS 5128
Fr. Exh. 28, volume 2, page 16
" " 29 " " 2 " 25.

27

- d) Constructing of the plant Toolite in peace time as installation for the transformation of foreign oil into fuel. Necessity to rebuild the plant when the war broke out as foreign oil was no longer available:

Fr. Exh. 29, volume 2, page 17
" " 30 " " 2 " 35.

Summary:

Thus c) to d) show that administration was only in accordance with commercial and not with military points of view.

T

28

- 2.) Handing over the Isocotan-Process which was important for the production of high grade aviation gasoline to Standard Oil and Shell prior to 1939:

US - TFS 5061/85, TFS 5062/63,
 Mr. Exh. 207, volume 9, sur-1. 1, page 10
 Mukofisch-Tsh, 100, volume 6, page 53 of orig.

Forcive attitude towards the request made by the Reich Ministry of Aviation to include the construction of a Isocotan-Factory into the Four Year Plan. Reason: K considered Isocotan Factory as un-consumical. This attitude completely unreasonable if K expected war:

US - TFS 5150, TFS 5126. Only after the outbreak of the war the construction of a Isocotan-Factory started in Germany. Approaches of Grah at TFS 127 to K to the effect that the US had ~~sold~~ ^{bartered} access to the US:

US - TFS 5409, TFS 5380/61
 Mr. Exh. 174, volume 9, page 50.

On the other hand the Allied Air Force was well supplied with Isocotan when the war broke out.

29

- 3.) Concluding of license agreements concerning Hydro and Nitrogen processes important for the fixing of war with firms of later enemy states:

US - TFS 5081/85, TFS 5060/64.

30

- 4.) Extensive exchange of experience with foreign countries, especially in the field of Hydro process with Standard Oil. Count 50 seq. of the prosecution is thus completely disproved:

US - TFS 5081/82, TFS 5060/62
 Mr. Exh. 1, volume 1, page 18
 " " 172 " " 9 " 21
 " " 173 " " 9 " 40
 " " 39 " " 9 sur-1. 1

27

for Ver-Exh. 278, volume 14, at 3.2
 Puhna - " 46 " 2, at 101
 " " 47 " 2 " 103
 " " 2 " 1 " 7.

31

- 5.) At the beginning of 1939 I advised to use a new process for the production of Trinitrotoluel which would make it possible to store Trinitrotoluel for a longer period. This, however, - shortly prior to the outbreak of war (1) - lowered production capacity by 50 % and delayed the preparations for war:

DE - DRS 5149, DRS 5125
 Nr. Exh. 25, volume 2, page 4
 " " 24 " 2 " 2.

32

- 6.) I advised to store Toluel which was important for peacetime economy and not to use Toluel for the production of explosives important for needs of war:
 DE - DRS 5476/77, DRS 5445/46.

33

- 7.) I rendered expert opinion on numerous projects in for iron countries which were included in the Four Year Plan; pre-requisite for the planning and a later carrying out of these projects was a long period of peace:

Basic letters: DE-DRS 5103, DRS 5062/63
 Details: Nr. Exh. 34, volume 2, page 41.

34

- 8.) Rendering of expert opinion on the Four Year Plan projects submitted by Goering:

Goering and Goering in accordance with economic points of view; world market prices for gasoline, tung and light metals; completely unnecessary if I objected war:

DE - DRS 5141/12, DRS 5090/91.

To these questions detailed statements which correspond to the above mentioned documents:

17

ter Meer : OPS 7052/53, PS 7002/03
 Schneider : OPS 7416, PS 7352/53
 Pust-fisch : OPS 8735/40, PS 8851/58
 Le-roe : OPS 7803, PS 7757.

35

Conclusion: The facts mentioned in 1) to 3) are a striking proof for the fact that X had no knowledge of Hitler's aggressive intentions. Thus the defense submitted even proof for the non-existence of the subjective element of participation in the preparation for a war of aggression.

- B) Examination of the objective and subjective element with the aim of the [individual] positions held, and activities carried out by X:

36

Principle: X's position and activity in economic life does not justify, either alone or in connection with the rest of the evidence submitted, the assumption that X participated decisively in the preparation of a war of aggression (objective element).

The selection of evidence showed nothing to the effect that X knew that the results of his activity would be misused by Hitler for the preparation of a war of aggression. (subjective element).

I. X's position and activity in the frame of the governmental economic organization:

37

1.) General survey:

Prerequisites for the objective element - that X must have acted decisively in the preparation of the war of aggression - is not given. It is true, X is an expert of high standing, his field of activity, however, comprised only a comparatively small sector of the entire Government,

17

namely the chemical sector only, and within this sector again only 5 special questions.

The actual importance of the field of activity of T is shown among others by Prosecution Exhibit 2239, volume 94, pp. 37, 38-41. In this letter of the Reich Minister for Armaments and Munition of 10 September 1943 it is clearly stated:

"The actual chemical armament program, as far as it is decisive for the war, is not subordinated to T but to the Reich Office (Chemicals)". This can be understood more clearly if one takes into consideration that T, in his capacity of Commissioner, did not render advice for the production of 5 "special questions" but only for the construction and expansion of the factories for this production. If one compares the workers employed in the field of activity of T with the total number of the workers employed in the German war economy it is also shown that T's field of activity in comparison to the total economy was only a small one. Total number amounted to about 20 millions; in the chemical sector 150,000 to 200,000 workers were employed, thus less than 1% of the total number.

Kr. Exh. 207, volume 9, pp. 1, 5.

Already for the above mentioned reasons no decisive participation (objective claims).

- 38 Besides that, T had no authority to make decisions in the sense of the IMT judgment and the rest of the Tribunal judgments.

37

By taking as basis the principle developed by the Nuremberg tribunals, for instance in case VII, K's position in the frame of the governmental economic organization subordinated to Goering cannot even be compared with that of a Chief of Staff of an AOK; the activity of a Chief of Staff includes the entire field of tasks of the Army Commander, while K worked only for a sub-sector in the field of the chemical industry.

39

Moreover, the Chief of Staff is familiar with the plans and intentions of the Commanding Officer - while K had no knowledge of Goering's and Hitler's aggressive intentions, he was not even permitted to gain informations about them.

Quotation from the first plea, count I to count I of indictment figures 2:

"Military Tribunal V in Case VII, English transcript pages 10, 491-10,502, acquitted the two Chiefs of Staff, General FOMERON and General von FRIEDER, stating that they were only advisers to the commander in chief and had no power of command of their own. Their knowledge of the existence of illegal actions did not fulfill the requirements of penal law. For this purpose, a person who orders, approves or becomes party to the crime by his consent, is required. Since KRAUCH as well, as his defense has proved, was active not in a decisive but only in an advisory capacity the establishment of his innocence is justified by applying the above-mentioned legal principles. This also applies, moreover, to the accusations made in the other counts of the indictment, since there too, KRAUCH was always active only as an expert in an advisory capacity."

40

In spite of the fact that the Chiefs of Staff were really the "right hands" of the Commanding Officer and were fully informed of the latter's plans and in spite of the fact that their field of activity included the entire field of tasks of the Commanding Officer, they were acquitted because,

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- (1) they were not authorized to make decisions on their own,
- (2) their participation in the criminal acts of the commanding officer was already for this reason as minor ones.

K too did not have the authority to make decisions. He was only the expert advisor of superior governmental authorities which made all important decisions on their own responsibility:

Prosecution Exh. 431, volume 20, Df 99, Ps 30. This is also one of the reasons for the fact that K's participation in the preparation of aggressive wars was only a minor one. (objective element).

41

2.) W's reason for the taking over of his positions and activities:

- a) no intention to assist in the preparation of wars of aggression.
- b) no ambitious and selfish plans to become an official and to receive a salary: DE - DPs 5121, RPs 5100;
- c) No intention of the IG to gain profits from K's position:
Basic information of the defense; on the contrary.
- d) Bosch's idea that K should protect science and economy from unwanted influences of the party and to find possibilities for labor procurement outside the present sector:

DE - DPs 5090/91, RPs 5069/70
 Kr. Exh. 9, volume 1, Page 40
 " " 6 " 1 " 35
 " " 8 " 1 " 39
 " " 10 " 1 " 47
 " " 44 " 2 " 72

T

Statement Frank-Fahle : DFE 1940/41
EFS 1952/53.

c) Foreign examples for X's decision:

"Kurz-Koller-und"

DE - DFE 5093/94, EFS 5072/73
Fr. Bzh. 32, volume 2, page 30
" " 33 " 2 " 36
" " 168 " 9 " 1.

3.) X's positions in the governmental economic organization:

42

a) Chief of the department research and development
May 1936-1945:

From May to October 1936 this department belonged to
Goring's raw-material and foreign currency staff
and after this office was dissolved it was transferred
to the office for German raw- and industrial materials.
In 1938 this office was renamed Reich Office for
economic expansion ^(RWA) and as per 1 September 1939 was
renamed Reich Department for economic expansion.
As only the title of the office was changed, X's tasks
remained the same, namely:

To steer processes in the field of chemical synthesis
which should replace materials imported until then
from foreign countries by production in Germany,
Observation of the activities of inventors, and
additional similar matters;

thus a clear position as advisor is shown clearly
by

Pres. Bzh. 431, volume 30, D 55, S 10,

c.f. also

Pres. Bzh. 553, volume 22 DS 136, ES 94.

77

43

b) Gebuchem from August 1938-1945:

Gebuchem is one of the many, at least 10, plenipotentiary
 Generals appointed for certain fields within the frame of
 the Four Year Plan: DE - DP 5119, DP 5090. Field of the
 Gebuchem "special questions", parts from the entire field
 of chemicals, as mineral oil, lime, light metal, nitrogen,
 powder, explosives and preliminary products: DE - DP 5117,
 DP 5096.

For the far greater sector from the entire field of
 chemicals which was decisive for the war (prosecution
 exhibit 2239, volume 94, PS 37, PS 41), Reich Office
 chemicals was competent: DE - DP 5241, PS 5212;
 c.f. PS 37.

44

Tasks and Authorities:

Prosecution makes unclear statements concerning K's partici-
 pation in the "planning". In this connection a sharp line has
 to be run between:

45

aa) The requirement planning that is the planning for covering
 the requirements in gasoline, lime etc. for certain purposes.

Example:

The increase in private automobile traffic was estimated in
 the Reich Ministry of Economy, further down the requirements
 for the "Uhrmacht in connection with the requirement was
 estimated" and from these factors it was calculated what
 quantity of synthetic gasoline should be produced in Germany,
 taking into consideration the balancing of the commercial
 balance (import and export, saving of foreign currency).

17

This requirement planning was never K's affair, but that of the Reich Ministry of Economy, the Army Armament Office, the Ministry for Armament etc.: Kr.Fzh. 15, volume 1, page 64/65.

46

52) The construction planning for the factories which was subordinated to the requirement planning as far as time and material was concerned, which was to cover the requirements calculated according to a). It included the advice for the required construction material, machines, most favorable kind of work, the number and kind of labor forces etc. It worked only within the frame of this construction planning, namely in the capacity of expert and advisor:

U - OPS 5120, EFS 5098/99
 Statement Schieber - OPS 5287, ES 5262
 " Pham - " 5379, " 5349
 " Zahn - " 11593/94, " 11455
 " Schindler - " 12564/45, " 12339/40,

Kr.Fzh. 15, volume 1, page 64
 " " 17 " 1 " 75.

47

K's authorities in the frame of the construction planning were by no means full powers according to which K, after an enterprise which required an additional factory had ordered the carrying out of such a construction, could have proceeded completely independently and that he could have given the orders for the carrying out on his own responsibility.
 No right to issue directives:

U - OPS 5122, EFS 5099
 From.Fzh. 440, volume 2, OS 104, ES 96
 " " 445 " 21 OS 105 ES 66 (c.f. T 61e)
 " " 446 " 21 OS 106 " 67
 " " 447 " 21 OS 107 " 67
 " " 457 " 21 OS 108 " 109

No right for independent orders:

U - OPS 5124, EFS 5103
 From.Fzh. 452, volume 21, OS 49, ES 36, figure a)
 " " 459 " 21 OS 218/19, ES 132/33.

17

No right to establish priority grades:

DE - OPS 5129, EPS 5108/09
 Statement Schieber : OPS 5309, EPS 5285
 Kr. Bhl 15, volume 1, page 65
 " " " " 9, suppl. 5

No interference with the production:

DE - OPS 5133, EPS 5112
 Kr. Bhl. 15, volume 1, Page 65

No right to allocate workers to the plants:

DE - OPS 5123, EPS 5101
 Pros. Bhl. 457, volume 21, DS 196, ES 109
 Kr. Bhl. 15, volume 1, page 65.

Could not conclude agreements concerning the expansion of plants:

DE - PS 5120, EPS 5099

No own targets:

DE - PS 5124, EPS 5102

48

Proofs for Y's position as advisor and expert only contained in prosecution documents:

aa) Pros. Bhl. 448, volume 21, DS 15, ES 12
 (letter to Koerner July 1938):

Y calls hims lf advisor and expert in technical matters;

bb) Pros. Bhl. 590, volume 30, DS 36, ES 78:

Y's name drafted as extensive - learning for the light metall field, which was actually under the administration of the Detachment, informs Y only after Goering's consent had been granted;

cc) Pros. Bhl. 1197, volume 65, DS 306, ES 54:

Koerner's "full powers" in the field of light metals, while Y was only an advisor.

This disproves prosecution exhibit 217, volume 8, DS 80,

ES 67 DE - OPS 5125, EPS 5104.

77

48a

Other Plenipotentiary Generals appointed within the
frame of the Four Year Plan could make decisions and
issue orders on their own responsibility:

DE - DPS 5121, EPS 5100
Statement Hilch: DPS 5371, EPS 5343.

49

Summary:

Designation as Plenipotentiary General is therefore
not the correct title for W's actual position:

DE - DPS 5120, EPS 5099
Statement Hilch : DPS 5371/72, EPS 5342/43
" Emmen : DPS 5373/79, EPS 5349
" Zehn : DPS 11593/94, 11597,
DPS 11455, 11456/59.

50

c) Commissioner Chief of the Reich Office for economic
extension (R44):

Since December 1940: Reich Office not a "Supreme Reich
Authority", was subordinated to the Reich Ministry of
Economy:

DE - DPS 5141, EPS 5118
Pres. Exh. 462, volume 21, PS 265, PS 169

Neither the Reich Office nor its subordinates own budget:

DE - DPS 5124, EPS 5102.

Tasks of the Reich Office:

Supporting of research, to give technical advice to the
Reich Ministry of Economy for the four year plan, set
up by the Reich Ministry of Economy:

Pres. Exh. 462, volume 21, PS 265, PS 169
Kr. Exh. 37, volume 1, page 78.

Thus here too nothing but expert advisor.

51

d) Was not a member of the Central Planning:

DE - DPS 5277, EPS 5252
Statement Hilch: DPS 5325, EPS 5302.

CERTIFICATE OF TRANSLATION

4 June 1948

I, S.J. Benburger, ETO 20062, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of document CLOSING BRIEF KRAUCH.

S.J. Benburger

ETO 20062.

52 e) War Economy Leader:

No office but only a title devoid of any functions whatsoever.

DE - DPS 5175, EPS 5151/52

ter Meer: DPS 6874, EPS 6750

Deposition 'erliment: DPS 2307, EPS 231³ etc.

53 4.) Activities of K. within the framework of the economic organization set up by the government.

Basic consideration: A large part of K's activities prior to 1939 referred to such projects only which had already been initiated before 1939 (in particular: gasoline) and which would have been implemented even if HITLER had not assumed power. However, in so far as these activities involved - among other things - the promotion of re-armament, they referred only to one individual sector of the large overall-scope of the chemical industry, the latter again representing only one part of the overall re-armament program.

For details see TZ 57 and in particular proc.exh. 2239, vol. 94, DS 37, ES 41.

54 a) K's activities in the framework of the Four Years Plan:

aa) Purpose of the Four Years Plan as promulgated in the fall 1936: procurement of employment, saving of foreign currency, reaching such a degree of economic autarchy as was possible; it is admitted that these aims partly concerned re-armament, among others:

DE - DPS 5095, EPS 5074

Deposition Koerner: DPS 2257, EPS 2265/66

" ter Meer: DPS 7041, 7064⁹

EPS 6991/92, 7018/19

" Schneider: DPS 7410, 7404/06

EPS 7346, 7340/42

" Ambros : DPS 7864, EPS 7792

Defense exh. 81 "German Foreign Policy"

vol. 1, ES 104.

Basic information presented by the defense.

This purpose did not indicate that HITLER had any

aggressive intentions.

- 54a Even HITLER's own memorandum concerning the Four Years Plan - pros. exh. 411, vol. 19, DS 129, ES 93 - does not indicate aggressive intentions. Hence it is obviously wrong to consider the Four Years plan only under the aspect of re-armament (this is the point of view of the Prosecution) and to consider re-armament only^a preparation of wars of aggression. In fact, the Four Years Plan embraced all economic sectors: textiles, food, forestry; compare the organization of the Four Years Plan:

Pros. exh. 427, vol. 23, DS 1, ES 1,
DE - DFS 5095, 5097/98, EPS 5074, 5077/78
Kr. exh. 13, vol. 1 p. 49
" " 14, " 1 p. 62
" " 34, " 2 p. 45 and many others;
ter Meer: DFS 5917/18, EPS 5791/92.

- 55 bb) Reference to the term commercial armament material, a term frequently discussed in this proceeding and coined in the USA; see Kr.exh.168, vol.9 p. 1 with the excerpts from the essay by Winden: "Economic mobilization in the USA."
The Prosecution evaluates the increased production of many goods of this type - important both for peace -time - and for war - requirements - only under the point of view of intentions of aggression.
Hence, innumerable conclusions drawn by the Prosecution are basically wrong; this applies in particular to the extension of the production of mineral oils, bone, light metals and nitrogen, and to the hoarding of certain products.

55a aae) Mineral Oils:

The following facts - proved not only by K. but also by other defendants - show that the development of mineral oil production had very little to do with the intention of waging aggressive wars:

Experiments concerning production of synthetic mineral oils even before the first world war:

Kr. exh. 1, vol. 1, p. 13/14, 28
 " " 3, " 1, " 27
 " " 5, " 1, " 31
 " " 26, " 2, " 7.

These experiments were followed up by large size industrial production long before 1933, viz. in 1927:

Kr. exh. 1, vol. 1, p. 14
 " " 26, " 2, p. 7.

During the economic crisis of 1930, I.G. refrained from closing down mass production in Leuna in order to avoid the discharging of thousands of workers and to support the employment procurement program of the Brüning government:

Kr. exh. 4, vol. 1, p. 19.

Contrary to the expositions given by the Prosecution - TB I, DS 33, ES 33 - the ensuing negotiations concerning the Feder agreement were connected with the discussions with Brüning:

DE - DPS 5062/63, EPS 5041/42
 Gottineau: DPS 12439/41, EPS 12198/200
 Gueterfisch: DPS 8748/49, EPS 8666/67.

Autarchy forced on Germany before 1933 because the German balance of foreign currency was already disturbed at that time. This is proved by the fact that foreign currency control was introduced as from July 1931 and tightened during the following years:

Deposition Koerner: DPS 2258, EPS 2266.

Foreign currency position became more tense in the end of 1935: Darre (Reich Minister for Food) requested foreign currency for food imports, Schacht (Reichsbank President) refused them because of the unfavorable foreign currency position. Goering decided in favor of Darre.

This individual action lead up to general measures promoting autarchy; to start with, the raw materials - and foreign currency- staff was set up:

DE - DPS 5088, EPS 5067/68
 ter Meer: DPS 6919, EPS 6793
 Haefliger: DPS 9334, EPS ~~6793~~ 9430
 Pros.exh. 554, vol. 28, DS 150, ES 100

One of the first foreign currency saving measures was the creation, caused by Schecht, of BRABAG by way of government orders (Auflagen):

DE - DPS 5068, 5071, EPS 5048, 5050
 Kr. exh. 170, vol. 9, p. 10
 pros. exh. 517, vol. 26, DS 81 squ. ES 51 squ.

Further measures forcibly promoting autarky and avoiding a considerable increase of imports, by way of an extension of peace time - motorization in Germany (number of passenger automobiles in Germany trebled, number of trucks doubled in the period from 1933 to 1938):

Kr. exh. 4, vol. 1, p. 28
 " " 36, " 2, p. 49
 " " 37, " 2, p. 50
 ter Meer: DPS 7046, EPS 6996/97
 Schneider: DPS 7419, EPS 7355.

See in particular the interesting synopsis contained in the documentary part, by confrontation of exh. 442 with exh. 455:

Similar aspirations in all countries, mainly in England. There, the hydretion plant Billingham was constructed with the co-operation of K. in the years 1933 - 1935:

DE-DPS 5079, 5081, EPS 5058, 5060
 Bustefisch-exh. 54, vol. 3, p. 35
 " 55, " 3, p. 52a.

56

In consequence, the extension of gasoline production in the years from 1933 is the organic development of an industrial development initiated by experiments even before 1914 and by the first large size experiments (Leuna) in 1926; this development was recognized as of economic importance by the Brüning government in the negotiations started in 1932. From the point of view of criminal law, it is irrelevant that gasoline, a commercial armament material, played also part in the re-armament program. Gasoline is involved in the mobilization plans of all countries.

57 bbb) Buna

Similar development as in the case of gasoline. Experiments made in the period before the first world war, as in the case of gasoline. Experiments resumed by I.G. in 1926; costs of experiments until 1930 several millions of Reichsmark:

ter Meer: DPS 7026, EFS 6955/56.

Here, too, the construction of the first plant was caused by the foreign currency position and by unemployment:

ter Meer: DPS 7041, EFS 6991/92.

Schacht's interest was the same as in the case of mineral oil:

ter Meer: DPS 7042, EFS 6992.

Increased motorization in Germany implied increased production of buna products - in the same way as of mineral oils - for merely peaceful purposes. Development of buna production no circumstantial proof of preparation for aggressive war. Buna production was even developed for the purpose of producing substitute leather for soles. The Wehrmacht itself did in 1937 not consider an extension of buna production necessary for Wehrmacht requirements.

Pros. exh. 552, vol. 28, DS 133, ES 92
DE - DPS 5104, EFS 5084/85
ter Meer exh. 167, vol. 5, p. 62
" " " 120, " 4, p. 34
" " " 129, " 4, p. 66
" " " 130, " 4, p. 69.

See in particular the interesting synopsis contained in the documentary part, by confrontation of exh. 442 with exh. 455.

58 ccc) Nitrogen

For full explanation of the peaceful purpose and aims see:

Schneider: DPS 7404/05, EFS 7340/42
Oster: : DPS 10853/55, EFS 10707/10
Schneider-exh. 13, table 1, vol. 8, p. 33
" " 14, vol. 8, p. 35
Oster-exh. 33 (was filed later).

59 ddd) Light metals.

For full explanation of the peaceful purpose and aims see:

Buergin : DPS 8456/58, EFS 8372/74
Haefliger : DPS 9208, EFS 9110
Haefliger exh. 15, vol. 1, p. 51
" " 29, " 3, p. 30

See TZ 56, last paragraph with regard to the fact that participation in the production of the "commercial" armaments material mentioned sub bbb) to ddd) is irrelevant in the meaning of criminal law.

60 sec) Hoarding:

- (1) K. had no authority and no power of directive with regard to hoarding:

Pros. exh. 718, vol. 39, DS 6, ES 3.

The directive concerning the safeguarding of supplies for mobilization dated 20 April 1938 was not drafted by K. but by the planning dept. of the Reich Office for Economic Development (RWA). K. was not a member of this department.

- (2) Hoarding was effected by order of government authorities; Nickel, e. g., was hoarded by request of the Reich War Ministry:

Pros. exh. 722, vol. 39, DS 66.72, ES 35.40

Tetraethyl by request of the Reich Air Ministry:

Pros. Exh. 732, vol. 39, DS 138, 143, ES 93.98.

- (3) Hoarding of Toluol indicates that there was no preparation for aggressive warfare:

DE - DPS 5476, EPS 5445/46

Kr. exh. 25, vol. 2, p. 4:

see also TZ 31 of this presentation.

- (4) As a matter of fact, such hoarding for defense purposes was customary in many countries:

Kr. exh. 21, vol. 1, p. 93

- (5) The small amount of the stores existing in Germany at the outbreak of war justifies the conclusion that Germany was not armed for aggressive war:

Burn stores for half a month; fuel for 6 months; very small stores of powder, explosives etc.:

DE - DPS 5115, EPS 5093

ter Meer: DLS 7050, EPS 7000/01

Ambros : DPS 7803, EPS 7767/68

Kr. Exh. 20, vol. 1, p. 82

deposition Schindler: DPS 12547

EPS 12341/42

" Ehmann : DPS 5384,

EPS 5356

" Zahn : DPS 11625/26

EPS 11487/89

- 61 b) K's activities for the Karinhall plan and the Schnellplan (first priorities project *for Rapid Plan*):

The connection of K. with the Karinhall plan and the Schnellplan has been given a completely wrong interpretation by the Prosecution.

aa) Until the middle of the year 1938, K. was not called in at all to co-operate in the planning: DE - DPS 5105, EPS 5086. The general industrial planning - which included mineral oils, buns and light metals among many other items - was carried out by the planning department of the Reich Office for Economic Development. This department was not subordinated to K: Pros.exh. 426, vol.20, DS 78, ES 20. In the middle of the year 1938, LOEB informed K. of this planning work performed by the planning department. It was in this connection that K. cautioned GOERING against wrong statistics of production and wrong time limits: DE - DPS 5107, EPS 5087.

bb) Thereupon, he was asked by GOERING for his comment on the existing plans concerning mineral oils, buns, light metals. Based on the planning done by the planning department, K. submitted to GOERING his own opinion on their practicability. K's statement was based on peace time considerations such as prices on the world market etc.:

DE - DPS 5110/11, EPS 5089/91.

By request of GOERING, K. also checked on the figures given by KEITEL for the PSV field (powder, explosive and raw products used in their production).

Result: the actual production amounted only to one ^{K.E.P.} ~~quarter~~ of the figures supplied by KEITEL:

DE - DPS 5114, EPS 5092. Thereupon, GOERING commissioned

K. to handle this field as well. The description of the ensuing discussions shows that aggressive wars were not mentioned at all:

Deposition Kerner: DPS 2263, EPS 2269/70.

The combined results of these discussions of K. with GOERING were the basis of the Karinhall plan. The activities of K. did, therefore, not amount to any initiative with regard to the plans co-ordinating requirements; they consisted in the submitting of a comprehensive expert opinion on the questions asked by GOERING with regard to the means of carrying out those plans which had already been established by the planning department of the Reich Office for Economic Development (RWA) in the field of gasoline, buna, light metals, and by the HWA (Army Ordnance Office) in the field of powder, explosives and pertinent raw products. The questions asked by GOERING referred to the amounts of material, manpower, energy and transportation necessary in order to implement those plans. Thereupon, GOERING issued the decree concerning the implementation of the constructions provided in the plans of the RWA and the HWA within the time limits described as practicable by K. This decree is the Karinhall plan, later called plan for chemical production.

The identity of the Karinhall plan with this GOERING decree has been proved unequivocally by:

61a

Procs. exh. 455, vol. 21, DS 88, 96, 100/101, 105, ES 56, 62, 64, 66.

This prosecution exhibit also proved that the buna development provided in the Karinhall plan is directly connected with increased motorization (DS 99, ES 63),

See TZ 45 for the meaning of the plans co-ordinating requirements.

bbb) that planning in the field of gasoline was well justified by economic considerations as such (DS 111, ES 69);

ccc) that planning in the field of light metals was very important for peace time economy (DS 99, ES 63).

For other implications of exh. 455 see TZ 47.

It is admitted that considerations of mobilization were involved, too. But such considerations prevailed in all countries (commercial armament materials!).

Hence, there is no proof of K's knowledge of HITLER's aggressive intentions. See also TZ 15.

62

- c) The Schnellplan is that part of Kerinshell plan which includes powder, explosives and pertinent raw products. The planning had been done not by the planning department of the RWA, but by HWA. No co-operation of KRAUCH in these plans co-ordinating requirements:

deposition of EHANN: DPS 5381, EPS 5352/53
 Kr. exh. 23, vol. 1, p. 99,
 " " 22, " 1, p. 95.

Because of objections raised by HWA: - see DE-DPS 5117/18, EPS 5096 - the activities of K. for the planning of development in the Schnellplan sector were much less comprehensive than those in the field of mineral oils, bone and light metal, because HWA retained the direction in the PSV sector as before:

DE - DPS 5117/18, EPS 5096
 deposition Ehmann: DPS 3161/62, 5378 squ.
 EPS 3140, 5350 squ.
 " Zahn DPS 11598, EPS 11458/59
 Kr. exh. 23, vol. 1, p. 97
 Pros.exh. 402, vol. 19, DS 106, ES 74.

Conclusion:

~~external~~ ^{internal (objective)}
 The ~~external~~ elements constituting the offense are, therefore, lacking for the following two reasons:

(1) The supervision of the development in the Gebechem sector consisted only in the submitting of an expert opinion and was devoid of any power of direction; for this reason alone it does not amount to an "essential" activity promoting the preparation for aggressive warfare;

(2) Compared with the overall scope of economy, the scope of K's activities was but small, see TZ 37.

As shown in TZ 37, the ^{inner (subjective)} ~~mental~~ elements constituting the offense are lacking, too.

II. K's position and activities within the I.G.:

63 1.) K. was a Vorstand member from 1933 until May 1940. However, his responsibility as such covers only the period up to April 1936. After this date, he did not exercise any activities as a Vorstand member, nor did he attend meetings of the TEA (technical committee) or others.

2.) The direction of Sparte I (gasoline, nitrogen) was later on transferred to Schneider (from 1936; in the beginning, Schneider was only acting as deputy head, 1939 he became permanent head of the Sparte):

Schneider - DPS 7387, EPS 7322/23
 Pros.exh. 437, vol. 20, DS 156, ES 63.

3.) This shows that since the spring of 1936 K. kept aloof from I.G. in order to maintain an unbiased and neutral standing vis-a-vis the entire chemical industry in the official economic organization:

ad 1) - 3):

DE - DPS 5259, EPS 5233
 CE - " 5435, 5483, EPS 5404, 5452
 Schneider: DPS 7387, EPS 7322
 ter Meer: DPS 6919/21, EPS 6793/95
 Pros.exh. 450, vol. 21, DS 33, ES 28/28a

deposition Schieber: DPS 5289, EPS 5263/64
 " Henneken: " 982, " 1021
 Pros. exh. 475, vol. (33, ES 28.
 44, 25)

- 64 4) For the reasons set out sub 3) K. also resigned from the BR/BAG Vorstand in 1937; DE - DPS 5072, EPS 51/52.

- 65 5) These facts refute the assertion made by the prosecution under count I/ C of the indictment : within the framework of the Four Years Plan, no preferential treatment was granted to I.G. by K. He even objected to the desires of I.G. if this was necessary in the general interest:

DE - DPS 5185, EPS 5160
 deposition Schieber: DPS 5289, EPS 5263/64
 " Henneken: " 982, " 1021
 " Gritzsch: " 2284, " 2292
 " ter Meer: " 6919/21, EPS 6793/94

Refutation of the fantastic figures given by the Prosecution according to which 90% of the staff of K's office had been I.G. employees:

IE - DPS 5143, EPS 5119
 Kr. exh. 16, vol. 1, p. 69
 " " 160, " 8, p. 5

- 66 6) The assertion of the prosecution that I.G. "eagerly solicited" a post connected with the Four Years Plan is completely unfounded. He was called in as an expert on the initiative of GOERING:

DE - DPS 5089, EPS 5068
 deposition Milch: DPS 5322, EPS 5299
 Basic information presented by the defense.

See T2 41 on the reasons for which K. accepted his honorary office. 7

- 67 7) From 1940 to 1945, K. was a member and the chairman of the Aufsichtsrat. In this respect, too, he did not exercise the substance of his functions: he attended but few meetings, and if so only for representative purposes:

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DE - DPS 5421, EPS 5391
Proc. Exh. 1313, vol. 68, LS 8, LS 7,
ter Meer: DPS 6921, PS 6795

This reason alone shows that K : - in his capacity of a member of the Aufsichtsrat - is not responsible for any acts of the Vorstand.

In addition, the members of an Aufsichtsrat consisting of 20 persons are never responsible as such for criminal offenses, if any, of the Vorstand, as in German law neither the Aufsichtsrat as a body nor its individual members are entitled to give binding orders to the Vorstand. This is also the opinion of the Prosecution. Otherwise, they would have indicted all persons who have been Aufsichtsrat members since 1939.

8) Charges preferred by the prosecution in connection with the activities of K in the I.G.:

a) "Vermittlungsstelle" (liaison office) W (V/W):

The nature and the activities of the V/W do not furnish any proof for the knowledge of K of the aggressive intentions of Hitler. He was not cognizant of the fact that these activities promoted aggressive warfare.

aa) Reasons for the setting-up of the V/W:

The V/W is the extension of an office which I.G. had maintained in Berlin since 1929 and which had been called "Vermittlungsstelle" since 1932, this office had been set up in Berlin for reasons of organization (easier and quicker communications to the central government authorities located in Berlin and to those offices of I. G., Sparte I, which were located in Berlin, such as central calculation office, sales departments for nitrogen and gasoline):

DE - DPS 5073/74, EPS 5052/53.

bb) The V/W since 1935.

From 1935 onwards, it became more and more necessary in the course of re-armament to maintain liaison with the central authorities in Berlin and with many new government departments then being established. Therefore, the office K was extended

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to Sparte II and III as well. In doing so, I.G. followed a procedure already applied by other large combines which maintained similar offices in Berlin for the same purpose:

DE - DPS 5074, LPS 5053/54
ter Meer : PS 6992, PS 6922
deposition Struss: DPS 1843, LPS 1858
" Diekmann: " 2194, " 2199/2200.

cc) Who was in charge of V/W ?

Not K, as stated by the Prosecution in Count I, B 19 of the indictment. Actually, there were special chiefs, each of whom handled the matters belonging to one of the Sparten. For instance, -r. Ritter was in charge of the matters concerning Sparte I, which was subordinated to K until 1936.

Pros. Lxh. 99, vol. 5, LS 80, LS 77
DE - DPS 5075, LPS 5054/55
tr. Lxh. 11, vol. 1, p. 44.

dd) The real nature of V/W :

Actually, it was an office channeling mail and staffed with qualified personnel. It was not entitled to make independent decisions.

DE - DPS 5075, LPS 5054
deposition Wagner: DPS 554/55, PS 581.

69 b) Counter-intelligence.

aa) Section A (counter-intelligence) of the V/W was not set up by K, as it has been asserted by the prosecution, but by Prof. Selck, the opposite assertion (based on pros.exh. 82, vol. 6, DS 81, LS 51a) has been refuted by pros.exh. 140, vol. 6, DS 30/31, 45, ES 30/41

bb) Purpose of the setting-up of section A :

Protection from foreign espionage :

pros. exh. 150, vol. 6, LS 104, LS 64.

in other words by no means active espionage :

DE - DPS 5076, LPS 5055
Kuehne : DPS 10276/77, LPS 10137/38
ter Meer exh. 62, vol. 2, p. 46.

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cc) No evidence for the knowledge of aggressive intentions in connection with espionage, in particular :

aaa) pros. exh. 922, vol. 49, DS 117, SS 88:
the data on English shadow factories have been compiled from English magazines :

DE - DPS 5480, LPS 5499 ;

bbb) pros. exh. 196, vol. 8, DS 13, SS 17 :
instructions concerning secrecy were given by express order of the Reich War Ministry :

Hoerlein: DPS 6210, LPS 6153

dd) Co-operation of V/4 in the prevention of violation of the recent and more stringent rules concerning treason which otherwise might have been committed inadvertently by publications concerning patents and by exchange of experience with foreign countries

DE - DPS 5076, LPS 5055

Knieriem: DPS 6571, LPS 6521

Mention of a parallel case in the U.S.A.:

DE - DPS 5154, LPS 5129.

70

c) Mobilization plans.

No initiative from the part of the I. G. or of K. They were transmitted by the Reich War Ministry and the Reich Ministry of Economy through the Reich Economy Group Industry. They were not meant for I.G. alone, but rather for the entire German industry; they only resulted in a large amount of unproductive work to be performed by the industrial firms:

DE - DPS 5077, LPS 5056

Pros. exh. 102, vol. 5, DS 85, SS 82

Kr. exh. 12, vol. 1, p. 46

deposition Gorr: D S 2692, LPS 2692

Parallel cases abroad :

Kr. exh. 32, vol. 2, p. 30 and

" " 168, " 9, " 1

deposition Huenermann: LPS 13789, LPS 13496.

71 d) Air raid protection measures:

Initiated prior to 1933. Even after 1933, no initiative from the part of I.G. or of K. They were strictly defensive measures.

DE - DPS 5078, EPS 5057
 pros.exh. 172, vol. 7, DS 41, ES 21
 " " 170, " 7, " 32, " 15
 " " 178, " 7, " 57, " 31
 " " 190, " 7, " 112, " 64
 " " 179, " 7, " 59, " 32
 Defense exh. 67, "German Foreign Policy"
 vol. I, p. 32

72 e) Map manoeuvres (Planspiele)

Here again, no initiative from the part of I.G. or K. Ordered by OKW and /or Military Economic Staff (Wirtschaftsstab):

DE - DPS 5077, EPS 5056
 Milch: DPS 5366, EPS 5337
 Gorr: DPS 2692, " 2692
 Kr. exh. 12, vol. 1, p. 46.

By these depositions and statements, pros.exh.190
 vol. 7, DS 112, ES 64, has been refuted; it has also been qualified in cross-examination:

Agner: DPS 536, 558, EPS 563, 588.

73 f) Giftgas:

K. was averse to research in the field of poison gas throughout. As early as in 1932, he deliberately refrained from studying and developing a new gas of that kind which had been detected in the course of experiments in the I.G. laboratories.

Kr. exh. 175, vol. 9, p. 56
 Kr. " 162, " 8, p. 30

In addition, Bosch had in 1934 instructed K. to turn down a suggestion from military quarters to the effect that IG should do research in the field of chemical warfare agents.

DE - DPS 5423, EPS 5392/93,

Because of this generally negative attitude, IG had not achieved any practical results in the field of chemical warfare

agents prior to the outbreak of war:

Pros.exh.334, vol. 12, DS 117, ES 137.

As far as chemical warfare agents were produced at all before the outbreak of war, this was done by express orders (Auflagen) of the Army Ordnance Office (see the remarks concerning pros. exh. 217, vol. 8, and pros.exh. 634, vol.35), or they were produced in installations owned by the Army; see also Mr. exh. 35, vol. 2, p.46.

III.) Conclusion.

The Prosecution has neither proved that the activities of K. as such were an essential contribution towards the preparation of aggressive warfare by Hitler (factual or objective elements, constituting the offense), nor has it been proven that K. knew that his activities were promoting aggressive war (mental elements or state of mind constituting the offense).

Additional arguments have been preferred by the defense to the effect that K. did not know of aggressive intentions of Hitler.

Thus, both the factual and the mental elements necessary in order to constitute participation in, and preparation of, wars of aggression are lacking.

Sub-section 2: Leging of aggressive wars:

74 I. Period up to 1 September 1939:

Even if the annexion (Anschluss) of Austria, the integration of the Sudetenland through the Munich agreement, and the measure declaring Bohemia and Moravia a Protectorate can be included in the conception of aggressive wars at all, no participation

of K. in the waging of these wars has been established. Neither as "Gebachem", nor as the head of the department Research and Development in the Reich Office for Economic Development, nor as Vorstand member of IG - (a function which K. did not even exercise since April 1936) - did K. participate in the carrying out of the three aforementioned operations. In addition, he was not in a position to realize that they were aggressive wars, so that here again the mental elements constituting the offense are missing.

75 II. As from 1 September 1939:

Neither in his capacity of a Vorstand member (up to 1.9.1940) nor in his capacity of chairman of the Aufsichtsrat did K. participate in the carrying out of aggressive wars. See TZ 63. The activities of K. in his honorary positions such as Gebachem etc. were not essential. As it has been proved explicitly sub TZ 37 of this brief, K. only submitted expert opinions and had no power of direction; in addition, he only dealt with a relatively small sector of the entire chemical field; this sector appears still smaller if compared to the overall scope of armaments. After the outbreak of war, the nature of K's office remained restricted to expert opinions and did not include the power of direction. This is proved, i.e.:

by the fact that the extension of Buna production (construction of the Auschwitz plant) was not ordered by K. but by the Reich Ministry of Economy and/or the Army Ordnance Office:

Pros.exh. 1408, vol. 72, DS 1, ES 1
Ambros exh. 229.

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TZ Even after the outbreak of war, K had no jurisdiction to allot quotas; he rather had to apply to other authorities for that purpose :

Proc. exh. 1422, vol. 72, DS 105, ES 71.

Not even the factual elements constituting participation are therefore, existing.

76 But the mental elements, too, are lacking. They require that K. knew for certain and beyond any doubt whatsoever that the wars which started since 1939 were of aggression. No sufficient evidence to this effect has been submitted by the Prosecution. It is well known that in Hitler's propaganda these wars were represented as defensive. K. was not in a position to obtain a 100% certainty concerning the nature of the wars, all the more as tension prevailed in his relations to the party.

In addition he had no authority to question such government measures : See judgement of the Supreme Court on the U.S. in the McIntosh case. In this judgement it has been held that it is not a concern of the individual citizens to question whether the war, in which their country is involved, is a just war or not.

The mental elements constituting a crime against the peace are, therefore, lacking, too.

77 Apart from this, the presupposed state of mind is lacking also for the reason that a state of necessity prevailed. The Prosecution admits that generally established principles of criminal law apply to the present case. - TB part I p. 1.

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In criminal law of all civilized nations, a state of necessity exempts the preparator from punishment. In the present case, the elements constituting a state of necessity have been clearly established in connection with the extreme pressure on production and with government orders (Auflagen) concerning production :

DE - DPS 5252, EPS 5225/26

deposition Milch	:	DPS 5366/87, EPS 5338
" Ehmann	:	" 3148 " 3127
" Lammers	:	" 5731 " 5692
" Kastl	:	" 5760/63 " 5720/21
" Vits	:	" 14615/18 " 14267/70

In consequence, K. must - because of a state of necessity - be exempt from punishment, even if it were held that his activities in giving expert opinions had been an essential participation in aggressive warfare, and that he had known for certain that the war was a war of aggression.

Second Section : Count II of the Indictment
(Spoliation and Looting).

78

Basic consideration : From 1936 up to the date when he resigned his post in the Vorstand (May 1940), K. did not exercise the functions of a member of the Vorstand. The same applies to the carrying out of the functions of chairman of the Aufsichtsrat, a post he held since May 1940.

For this reason, the fact that he was a member of the Vorstand and/or Aufsichtsrat of the I.G. does not render him responsible in any way for offenses, if any, charged under this count.

79

Neither is he responsible for them in his capacity as (temporary) chief of the Reich Office for Economic Development or qua Gebodener.

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Details connected with this issue:

80

A) Poland :

- a) Dr. Wurster's trip to Poland was not caused by the initiative of K : Pros. exh. 1134, vol. 55, DS 58, ES 34; the trip was undertaken by order of the Reich Ministry of Economy:

DE - DPS 5186/87, 5458, 5487;
 EPS 5161/62, 5428/29, 5455/56
 Wurster-exh. 82, vol. 2, p. 79
 " " 83, " 2, " 83.

- b) No participation of K in, or influence on, the acquisition of Polish dyestuff plants.

81

B) Russia:

1) Konti-Oil :

- a) Membership in the Konti Oil Aufsichtsrat does not constitute spoliation or looting. Konti Oil was founded in order to re-transfer into German hands the administration of previous German interests in the South Eastern area (Steaus Romana, etc.). Evidence:

Pros. exh. 1176, vol. 64, DS 43, ES 33+)
 DE - DPS 5496, 5189, EPS 5465, 5164
 Kr. exh. 177, vol. 9, p. 60.

- b) Pros. exh. 1170, vol. 63, DS 22, ES 27, misrepresents the purpose of Konti Oil. It was only in July 1941 after the outbreak of the war with Russia that Konti Oil was ordered by the Reich Ministry of Economy to extend activities to the occupied Russian territory.

DE - DPS 5189, EPS 5164
 Pros. exh. 1567, vol. 64, DS 44, ES 33+)
 Kr. exh. 177, vol. 9, p. 60
 Bueterfisch: DPS 8930, EPS 8841
 Bueterfisch-exh. 173, vol. 7, p. 6

- +) In this connection, it must be pointed out that Pros. exh. 1562 is incomplete, as far as it concerns this issue. In the English text of doc. exh. 1567, vol. 64, DS 43, ES 33, four paragraphs are missing; these very paragraphs give the reasons why Konti Oil reacquired the former German interests in Rumania etc. As the Defense does not know for certain whether the English text of these explanations are contained in the records of the Court, they are attached to this closing brief as an appendix. TZ 122.

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The Prosecution has not furnished evidence to the effect that Konti Oil mined oil to such an extent that this production was a violation of the Hague Rules on Land Warfare. The production was but negligible, as shown by the diminutive turnover figures shown in Pros. exh. 1567, DS 58/59. The figures mentioned therein, amount to

30,000 tons in 1942
for Ostland Oel Vertriebs-G.m.b.H., and
240,000 tons in 1942
for Ukraine Oel Vertriebs-G.m.b.H.

are so diminutive, in proportion to other figures of output, that they prove the above assertion.

As the pertinent paragraphs are not contained in the English text of Pros. Exh. 567, and as the Defense does not know for certain whether they will ^{be} available to the Tribunal in time in the English version, they will be attached to this closing brief as an appendix, see also the note to TZ 81 a) and b) concerning Pros. exh. 1567, vol. ~~9~~, ~~p. 60~~. ES 33

Further evidence for the above assertions :

DE - LPS 5191, ZPS 5165
Kr. exh. 177, vol. 9, p. 60.

- c) The production of oil was not even sufficient for the army of occupation. In consequence, there is no evidence to the effect that the oil production of Konti violates the provisions of the Hague Rules on Land Warfare, even if the extensive interpretation of art. 53 of these rules applied by the

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Prosecution were accepted.

For this reason alone, the members of the Konti Vorstand are, therefore, not guilty of spoliation or looting. This follows from another reason, too: the decisions of the Vorstand were not free and not left to their discretion; all decisions of the Vorstand derived from express directives of the Reich Ministry of Economy.

In addition, the Reich Ministry of Economy was under full control of the Reich Ministry of Economy in the meaning of company law (the ministry owned half of the shares and the shares belonging to the ministry entailed fifty votes each):

DE - DPS 5187, EPS 5162.

As far as K is concerned, he is even less guilty of spoliation and looting, because he was not a member of the Vorstand, but only one of the 25 members of the Aufsichtsrat who represented either the banks and corporations holding Konti stock or the Reich Ministry of Economy: Pres. exh. 1565, vol. 64, DS 26, DS 24/25. The Aufsichtsrat has no authority to interfere with the managing of the corporation by the Vorstand. It is the opinion of the Prosecution itself that the members of the Aufsichtsrat are not responsible for acts of the Vorstand; otherwise, the other 24 Aufsichtsrat members would have been indicted, too.

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- 2) Letter of Ambros addressed to K, dated 28 June 1941.
 Pros. exh. 1178, vol.63, DS 44, S 49, does neither
 prove that buna plants existing in the occupied
 Russian territories were looted at all, nor that K
 took part in an act of looting. The correct interp.
 tation of the letter must consider the fact that
 Ambros then was of the erroneous opinion that K
 would be commissioned qua Gebechem with the super-
 vision of the buna plants in Russia. However, this
 task was not assigned to Gebechem but to the Reich
 Ministry of Economy, the Armaments Ministry and the
 Wirtschaftsfuehrungstab (Economic Staff) East,
 of which K was not a member :

DE - DPS 5490/91, CE 5495,

ES 5459, 5463.

Pros.exh. 1174, vol.63, DS 32, S 36.

82

C. Norway:

The initiative for the exploitation of the Norwegian
 aluminum capacity did not come from K. Actually, the
 project was drawn up by Dr. Koppenberg, the plenipo-
 tentiary of Udet:

DE - DPS 5191, 5428, EFS 5165/66, 5397.

K did not know the exploitation program before
 Koppenberg showed him the completed plan which con-
 tained a remark of Goering by which Goering had
 approved of it. Pros. exh. 590, vol.30, S 98, ES 78

82a

The letter written by Moschel dated 19 October 1940
 Pros.exh. 585, vol.65, DS 73, ES 63, does not
 justify the interpretation that it had been K's
 intention to bargain for the largest possible
 participation of IG in the future KORDAG; the fact
 that the cartel quotas as such were fixed excluded
 this possibility:

DE - DPS 5195, EFS 5169.

Such intention would, however, not constitute spoliation and looting.

In fact, the activities of K. were restricted to the function of advising Koppenberg with regard to the technical implementation of the light metal program which Koppenberg had set up quite on his own; see also

Ilgnier : DPS 9730, 9767, EPS 9578, 9645

Heefliger: " 9287, " 9185.

K. took no part whatsoever in the negotiations concerning the creation of Norsk Letmetall and the acquisition of the French held stock of Norsk Hydro:

DE - DPS 5194, EPS 5168.

K. had nothing to do with the creation of NORDAG (a subsidiary company of the Reich controlled Heise Leichtmetall AG), which managed the exploitation of the entire aluminum capacity.

This firm was even founded in contradiction with K's suggestions:

Pros. exh. 590, vol. 30, DS 138, AS 105.

83 2) France:

1) Francolor/Rhone -Poulenc.

No evidence of any co-operation or participation whatsoever of K. in these transactions. K's name is not even mentioned in any of the pertinent documents contained in volumes 57 - 59 of the prosecution documents: it is not even mentioned to the effect that any of these records or other documents had been brought to K's notice.

84

2) Simon Mine. (Pros. exh. 1840/1844):

K. was instructed by the Reich to make suggestion concerning the development of aluminum production. His enquiries with the pertinent industrial firms elicited the fact that the existing power plants were not sufficient. Hence, the suggestion of Quack - an expert (Sachbearbeiter) working for K. - to use generators belonging to plants located in the German territory adjacent to the eastern frontier and evacuated by order of the authorities, so that these plants had been closed down in the course of the evacuation. When the expert reported orally to the Wehrmacht department in Kreuznach, he was given a list containing all plants located in the evacuated German territory and several plants located in French evacuated territory.

Upon enquiry, the Military Economy and Armaments Office stated that Quack was considered authorized to dispose of the machines located in the plants. Thereupon, Quack wrote the letter dated 13 February 1940 (pros. exh. 1840). This letter contained nothing but an enquiry based on the instructions of the Reich Air Ministry; Quack asked whether the turbine and or the boilers of the Simon Mine and the Burbacher Huette might be dismantled. This question implied the basic question whether such dismantling was legal, all the more as K in his capacity of Gebechem had no legal adviser: DE - DPS 5599, EPS 5560.

By order of Keitel, instructions were then given to carry out the dismantling: pros. exh. 2222, see also pros. exh. 1843.

As far as K. himself is concerned, he signed the letter dated 13 February 1940; after this, he did not hear of the matter before the dismantling of the generator in the Simon mine had been completed. It was only in Nuerenberg that K. heard of the correspondence between the Military Economy and Armaments Office, the Foreign Office and Todt (pros. exh. 1841-1843) in which the legal admissibility of the dismantling was discussed:

CE - DPS 5560/61, EPS 5522/24
DE - " 5566/69, " 5529/31
Kr.exh. 179 and 180, vol.9, p. 64 and 67.

Thus, the activities of K. only consisted in sending - in accordance with the instructions of a government agency (Reich Air Ministry) - an enquiry to another government agency (Wehrmacht) and to ask whether it was permitted to remove generators and boilers from plants located in no-man's-land and within the range of artillery fire.

Thus, even the factual elements constituting spoliation and looting are lacking, in addition, there exists no evidence to the effect that dismantling was actually carried out on French soil and or that the dismantled generator was French property.

The mental elements (state of mind), too, are lacking. If a person applies to a government department for approval of a measure, he can expect that the authority which grants the approval and orders the carrying out of the measure, has examined the question whether the measure is legal.

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CERTIFICATE OF TRANSLATION

4 June 1948

I, Ernest Schaefer, AGO No. 20 165, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of CLOSING BRIEF KRAUCH.

Ernest Schaefer
ETO No. 20 165

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85 E) Netherland: (Pros.Exh. 1978-1980)

Plant Sluisdijk was shut down since the beginning of the war as a result of artillery operations.

Rumscheidt's testimony: DPS 14710. EPS 14427.

Dismantling in 1943 not on K's initiative but by orders of RM and of the Reichskommissar for occupied Netherland:

Rumscheidt's testimony: DPS 14710/14, EPS 14427/35.
Kr. Exh. 178, Vol. 9, page 62
Bustofisch Exh. 271, suppl. 2

Taking over effected by Economic Research Association (Wifo) of the Reich Economy Ministry. K used only for advice concerning machines the dismantling of which had been ordered by RM and the Reichskommissar.

Summing up and conclusion.

There was no participation of K in robbery and looting in any of the cases cited by the prosecution.

- 86 That K thought about "robbery and looting" in occupied territories is shown by the fact that he had prevented a general dismantling of French, Belgian and Dutch nitrogen factories-of the Dutch factories, Sluisdijk was shut down since the beginning of the war-planned by official German agencies in 1942: ^F

DE - DPS 5196/5200, EPS 5170/5174
Kr. Exh. 39, Vol. 2, p. 54
Kr. Exh. 40, Vol. 2, p. 56

^F Cf. Rumscheidt's testimony: DPS 14710, EPS 14427.

Further reference to the intended dismantling of the valuable laboratory of the Bataaf'sche Petroleum

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Maatschappij in Amsterdam, prevented by K's interference:

DE - DPS 5205, ZPS 5177/79
 Kr. Sch. 41, Vol. 2, p. 63
 Kr. Sch. 42, Vol. 2, p. 67
 Kr. Sch. 43, Vol. 2, p. 43.

Finally reference to the fact that K always supported the independence of the German Ford Works in Cologne, belonging to the American Ford concern, against attempts to incorporate them into the Hermann-Goering Concern:

DE - DPS 5201/05, ZPS 5174/76
 Kr. Sch. 44, Vol. 2, p. 72
 " " 45, " 2, p. 76.

Third Section Count III of the charges - Slave labor and mass murder

Sub-section 1: General

87 I. No responsibility of K as representative of IG

All facts alleged in reference to this count of the charges occurred after May 1940. Since 1940 K not member of Vorstand anymore, but member of the Aufsichtsrat (Chairman). The Prosecution itself claims that Vorstand and not the Aufsichtsrat responsible for labor matters: KG Part III, DS 19 and 23, SS 19 and 23.

Therefore K as a member of the Aufsichtsrat -like other members of the Aufsichtsrat who are not co-accused- is a priori not responsible for alleged crimes as claimed in Count III; (especially since the Aufsichtsrat according to German law is not a superior of the Vorstand, is not authorized to interfere with the Vorstand's business management).

Besides K is also not responsible since practically he never did perform his duties as member of the Aufsichtsrat from the time he consciously had kept aloof from the IG business (1938⁶); cf. TZ 63, 78.

87a II.K's responsibility as Gebechem:

K dealt with labor problems only as Gebechem. Tasks in this connection:

1.) Matters concerning competence:

- a) ^{To advise} R.G., R.M., Central Planning, Ruelin and R.M. as to amount of manpower necessary for the ordered buildings belonging to the Gebechem sphere;
- b) to express expert opinions whether requests for manpower assignments made by the individual firms to the labor authorities (Labor Offices) were justified or perhaps were to be changed:

DE - DPS 5241, ZPS 5212
 Pros.Exh.499, Vol.24, DS 17, ES 13, No.3

- c) to help in difficulties which arose in connection with labor problems in finishing in time buildings which were under his supervision: DE - DPS 5210, ZPS 5181.

In such cases to express opinions as to the number and professional training of the requested workers (Fitters, electricians, auxiliary workers etc.).

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Workers assigned to the individual constructions either: German workers, Foreign workers, FIs or concentration camp internees. Employment and assignment of manpower exclusively through the Labor Offices, Land Labor Offices or RM. The inaccurate expression, often used in correspondence, "procurement" of workers by Gebochem, does not permit any conclusions against the above argument (cf. Ambros Exh.221 and its explanation by Kr. Exh.210, Vol.9, suppl.5.)

Therefore K only advising and giving opinions as to labor problems. Not authorized to make independent decisions; particularly

- (1) K not authorized to assign workers to a particular construction job:

DE - DPS 5210/11, EPS 5181/82
 Pros. Exh.457, Vol.21, DS 196, SS 109
 Kr. Exh. 15, Vol.1, p. 64.

- (2) K not authorized to fix degree of urgency for distribution of manpower:

DE - DPS 5209/10, 5130, EPS 5109, 5181
 Pros. Exh.2199, Vol.93, DJ 2, SS 1

- (3) K not authorized to decide about Ull-positions, i.e. not authorized to order that particular workers urgently needed for construction of buildings are not to be drafted into the Wehrmacht:

DE - DPS 5215, EPS 5187;

- (4) K not authorized to order the Labor Offices out of which disposable group (Germans, foreign workers or FIs) workers who were requested by the firms are to be taken:

DE - DPS 5212, EPS 5213;

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- (5) an especially striking proof that K was an advisor without own authority to decide and that he could not make himself dispositions as to manpower:

Proc.Exh.457, Vol.21, DS 196, ES 109
DE - DPS 5211/12, EPS 5182/84.

Opinions and suggestions of K were by no means always followed; see Speer's intervention on behalf of the Jaeger-program and of the P- and B program:

DE - DPS 5212/13, EPS 5184.

See remarks to

Proc.Exh. 478, Vol. 22, DS 30⁹, ES 35
Proc.Exh. 480, Vol. 22, DS 53, ES 44

in part II of this closing brief where each individual document is discussed again.

89 2.) Objective competence:

K's advisory activities extended only to construction work which was supervised by him as Gebechem. Buildings belonging to the remaining, much greater field of chemistry were supervised by the Reich Office Chemistry:

Proc.Exh.2239, Vol.94, DS 37, ES 41.

As to them the Reich Office Chemistry advised the labor authorities:

DE - DPS 5241, EPS 5213.
Proc.Exh. 499, Vol. 24, DS 17, ES 13, No.3.

Opinions as to manpower necessary for production in the constructed factories not within the competence of K but that of the RM:

DE - DPS 5422, 5247, EPS 5218, 5391.
Proc.Exh. 2239, Vol.94, DS 37, ES 41.

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Sub-section 2: Foreign workers.

K did not participate in the creation of the plan to bring foreign workers to Germany. Plan originated from the government, especially Funk (later on Sauckel was ~~decidedly~~^{active} engaged in it). At first hiring of manpower by labor authorities on voluntary basis; this was successful since there was considerable unemployment in the occupied territories and workers in Germany received additional rations for heavy workers. K, when asked about his experiences with voluntary foreign workers, pointed out the so-called use of firms (Firmeneinsatz) at the reconstruction of the plant Oppau destroyed in 1921. Thereupon by request of the RM use was made of firms abroad. With the appointment of Sauckel (1942) slave labor program started.

I. Use of firms:1.) Reasons for use of firms:

DE - DPS 5216/18, ZPS 5188/90
Kr.Exh.49, Vol.3, p. 18.

2.) Nature of use of firms:

Legal relations only between a foreign firm and a firm within the Reich. No legal relations between foreign workers and the firm within the Reich. Absolutely voluntary basis:

Kr.Exh.48, Vol.3, p.	10
" " 49, " 3, "	14
" " 41, " 3, "	24
" " 182, " 9, "	71
" " 51, " 3, "	24
" " 64, " 3, "	68
" " 67, " 3, "	84
" " 72, " 4, "	5
" " 75, " 4, "	21
" " 99, " 4, "	84

and many other exhibits in volumes 3, 4, and 5 of the Krauch documents.

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Testimony Schieber: DPS 5290, EPS 5265

- 71a 3.) These workers, too, assigned by the labor authorities
(labor office, land labor office, RAM or IRL):

Kr.Bch. 56, Vol.3, page 40
" " 68, " 3, " 96
" " 77, " 4, " 31
" " 59, " 3, " 46.

- 4.) The use of firms respected and popular abroad:

Kr.Bch.62, Vol.3, p. 55
" " 75, " 4, " 19
" " 93, " 4, " 71
" " 97, " 4, " 79
" " 52, " 3, " 27

- 4a) Same food as for indigenous workers:

Kr.Bch. 108, Vol.5, p.60.

- 92 5.) All this explains the establishment of offices abroad
which supervised this use of firms which according to
UK - DPS 5220/24, EPS 5192/97
comprised about 20-25,000 workers, also at a time when
Sauckel's slave labor program was being operated already.

These offices also took considerable social care of
employees working in firms used. Examples for that:

Getting special leave for workers whose relatives
had fallen sick;

Delivery of baggage to workers staying in Germany;

Remedies in cases of complaints because of in-
sufficient food or accommodation;

Care for the widow of a worker who had died:

Kr.Bch.98, Vol.4, p.85.

Support for a workers leave for participation at the Communion of his children;

Kr.Exh.88, Vol.4, p.62;

Gebeckenis Brussels asks for special leave for workers for tooth treatment;

Kr.Exh.88, Vol.4, p.53;

Aid in transfer of wages to the home country, care for higher wages;

Kr.Exh.189, Vol.9, p.84.

93 6.) This use of firms does not violate international rules of any kind. If the prosecution refers to judgments passed in Belgium (Proc.Exh.2180-2182, Vol.92, DS 97-106, ES 94-101 for identification) then this is a matter of judgments against violations of national rules (High treason etc.) but not of international rules.

94 7.) No responsibility of K for compulsory measures used by German authorities occasionally against foreign workers employed by use of firms after Sauckel's appointment as ^{in 1942} GBA. These measures, too, in as far as in K's power, frustrated and alleviated.

a) After Sauckel's appointment as GBA and the establishment of Compulsory Labor Service, cf. 72 90, interferences occurred with labor contracts concluded between the foreign firms used and their own workers employed in Germany, especially by extension of the contract. K. frustrated these measures considerably.

- aa) To those workers who were on leave and whose contracts had been terminated according to the voluntary agreement but according to Sauckel's directive had been extended, and who did not want to return to Germany he had papers issued which certified the proper termination of the labor relationship, thus these workers got food ration cards and were spared from ~~return to~~ *being returned* Germany:
Kr.Exh.46, Vol.3, p.4.

- bb) In other cases K took care that these workers were released home as "sick" and so were given proper papers:

Kr.Exh.49, Vol.3, p.20.

- b) K helped if labor offices employed compulsorily in other jobs workers from these hiring firms or if German firms transferred for their own use workers employed by the afore-mentioned firms:

Kr.Exh. 96, Vol.4, p.77
" " 73, " 4, " 15
" " 109, " 5, " 60.

- 95 Neither does Proa.Exh.2055 (by the way submitted not against K but against Jacobs during cross-examination) support a criminal responsibility of K. The letter of the French Ministry of Former Combattants and Disabled Veterans represents the situation in an absolutely wrong manner.

German firms employing foreign workers through the use of firms had directives from German labor authorities to report workers who had broken their contract to the foreign firm (employer) besides directly to the labor procurement authorities

in France. On the other hand the foreign firm had directives from the GHA (not from Gebechem) to report these workers to the German Kommandantur, in case their whereabouts were not known, on a prescribed form which was for the search file. (F.K.). This report had to be forwarded through Gebechem for the information of the office of Gebechem which had arranged the hiring by use of a firm:

Kr. Bch. 205, Vol. 9, Suppl. 3
 " " 2 03, " 9 " 2.

Conclusion: The reports did not come from Gebechem but from the French firms which had concluded the labor contracts and by which the workers who broke their contracts were employed. Gebechem in Paris was therefore a messenger only when forwarding the search reports made by French firms.

K. could not avoid the forwarding for the simple reason that the Kommandantur had already received reports from *the respective* German firms.

- 96 However K could prevent German firms within the Reich from causing police searching measures against workers who had broken their contracts and who were employed through the hiring firms. For this purpose memo to German firms with directive that they should not report to the Gestapo but should use K's area representatives

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as intermediaries:

Kr.Exh.61, Vol.3, p.54.

Reports reaching K's area representatives were not even in one case forwarded to the Gestapo.

Kr.Exh.163, Vol.8, p.32

" " 186, " 9, " 79

DE - DFG 5239, ZPS 5210/11.

Conclusion:

According to all that, K did not cause any compulsory measures against workers who had come to Germany through the intermediary of firms. In addition to that he endeavored to alleviate or to rescind compulsory measures ordered by labor authorities if they concerned workers employed through the intermediary of firms. Forwarding of search reports of French firms to the Kommandantur is an absolutely unessential activity within the scope of the slave program of the government. Thus not even the objective element of participation in the slave program exists. Likewise the subjective element is lacking. K could not resist the directive to have these reports forwarded (state of necessity).

97 II. Slave workers:

- 1.) The war situation resulted in a further increased shortage of manpower, therefore appointment of a man especially intimate with Hitler, Gauleiter Sauckel as GBA (Plenipotentiary General for Labor Allocation). On his initiative compulsory service laws for the occupied territories were created.

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K absolute enemy of such compulsion, first for ethical reasons, second for practical ones, because he did not expect anything from working efficiency under compulsion. K. without any influence and any suggestion as to elaboration of these laws. This goes not only for him as an individual but also for his position which was far beneath the level on which Sauckel moved as Hitler's special intimate with the rank of a minister in his capacity as GBA:

DE - DPS 5223/27, ZPS 5195/5200
Kr.Exh.181, Vol.9, p.69.

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2.) In his expert opinions K expressed his views as to number and professional training. The procurement was always the business of the labor authorities on the ground of requests made to the labor authorities by the constructing firms and corporations. Thus K never suggested a certain kind or group of workers, like e.g. French foreign workers etc.:

DE - DPS 5226, ZPS 5198, Plea p.III b.No.3
Ambros Exh.114, Vol.4a, p.38 as example,
Kr.Exh.15, Vol. 1, p.64.

K was never hiding his attitude that he wanted German workers and if not German workers then in any case voluntary workers. cf. incident in the Central Planning as told by witnesses

Milch : DPS 5326/27, ZPS 5303/04;
Schieber: DPS 5317, ZPS 5294/95

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Reference to Flick judgment which does not consider even employment of slave labor criminal, K, however, expressed only "expert opinions".

98a 3.) Circular Pros.Exh.476, Vol.22, DS 34, ES 29, no proof of criminal responsibility of K.

a) The circular itself shows that it did not discuss slave workers but "workers employed through individual hiring".

b) The initiative to search for these workers emanated from the GBA and not from K. The former had ordered long before the date of this circular ^{of} August 1943 measures for search for such workers. Kr.Exh.50, Vol.3, p.32. These directives were addressed to all employers ^{not only to} ~~except~~ the firms of the Gebechem sector: Kr.Exh.185, Vol.9, p.77. Within these measures K was ordered by the GBA to send circulars to firms working at the construction sites supervised by him: ^f ~~to~~ - DPS 5239, EPS 5210.

c) As a matter of fact not one worker was returned:

Kr.Exh.50, Vol.3, p.21
DE - DPS 5240, EPS 5211.

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- 72 d) Out of about 100 reports which came in as a result of the circular the office Tittus which was subordinate to GBA, Paris, forwarded only a few for search action; besides the firms discontinued reports soon, especially since K suggested that to them:

DE - DPS 5240, EPS 5211.

Summing up 1.) to 3.):

According to what was said above K did not possess an own authority to decide within the scope of slave labor employment. He was rather an expert giving opinions. For this reason if his activities furthered the slave labor program *at all*, then only unessentially.

Circular: Pres.Exh.476, Vol.22, DS 34, ES 29, did not have a furthering effect on the slave labor program.

Thus falls off the objective element of participation in slave labor program.

There is no subjective element either (State of necessity).

- 77 4.) No guilt of K of inhuman treatment of so-called slave labor, rather considerable voluntary social care by K.

- a) K not responsible at all for treatment of workers since not employer, neither as member of the

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the Aufsichtsrat of IG (cf. TZ 87), nor as Gebechem, who was only giving expert opinions and advice as to the need of workers and who voluntarily took socially care of them.

- b) Prosecution did not prove that foreign workers were treated inhumanly at all.

Proof to the contrary by the Defense:

Wurster Exh. 40/68, p.1-143, p.1-143, Doc. Vol. 3	
Jachne Exh. 3, 36, 55, 57, 58,	" " 3
Gajewski Exh. 34, 40, 41, 42	" " 2
Baergin Exh. 44, 46, 48, 49, 51, 53, 56,	" " 5
" " 61 and 62,	" " 6
Schneider Exh. 45,	" " 9
" " 48, 51, 52, 53, 55	" " 10

99a

- c) Although it was definitely outside of his competence K supported with all means welfare measures of the plants and gave far-reaching suggestions for welfare for ethical reasons.

Examples:

- aa) Food: Creation of the food committee of the Gebechem:

Pres. Exh. 1376, Vol. 70, DS 120, ES 63
 Kr. Exh. 111, Vol. 6, p. 2
 Kr. Exh. 113, " 6, " 15/21
 " " 190 " 9, " 91.

Employment of food specialists:

Kr. Exh. 111, Vol. 6, p. 2.

- bb) Care for clothing:

Kr. Exh. 111, Vol. 6, p. 2

- cc) Care for disinfection of dwellings and cleanliness of workers (opportunities to take showers):

Pres. Exh. 1376, Vol. 70, DS 122/23, ES 66/67.

- dd) Care for religious facilities:

Pres. Exh. 1376, Vol. 70, DS 123, ES 68/69.

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Creation of cultural installations like church, Kindergarten, schools and library for Eastern workers of the plants Blechhammer and Haydebreck:

DE- DPS 5236, ZPS 5206/07
Kr.Exh.161, Vol.8, p.10.

- ee) Recommendation: of a special referent (who had to leave his position at the Ministry of the Interior because of his political opinions) to Haydebreck:

DE - DPS 5233, ZPS 5204/05.

- ff) Intervention in Louna with the aim of getting a dispensary installation for the construction site Schkopau:

DE - DPS 5232/33, ZPS 5204.

- gg) Accompanying of foreign workers transports by train attendants of the respective plants in order to secure food and care on the transport:

DE - DPS 5242, ZPS 5213.

- hh) K checked himself at the construction sites the supplying the foreign workers:

Kr.Exh.111, Vol.6, p.5.

K. always stressed the point that he had attached the greatest importance to good accommodations, food, treatment and recreation of the foreign workers:

Kr.Exh.112, Vol.6, p.8
" " 47, " 3, " 7.

In view of all that the prosecution did not prove that

- (1) foreign workers in German firms, which constructed buildings for the sector belonging to Gobenham, were treated in an inhuman way;
- (2) K was responsible for such a treatment if it occurred at all. In both cases the Defense produced evidence to the contrary. Therefore K not guilty of inhuman treatment of foreign workers.

Sub-section 3: Prisoners of War

100

General:

- 1.) K's activities not causal at all for the use of P's for work (which by the way would not be punishable), nor
- 2.) for the use of any P's -for work not compatible with international regulations- which besides was not supported by any evidence.

Labor authorities (Labor Offices, Land Labor Offices or RAM) in agreement with HCO and ^(Stalag) P camps decided about employment of P's. The question whether employment in a certain work was admissible according to international law was examined exclusively by P camp officer:

Defense Exh. 34, 35, F. Doc. Vol. ~~2~~, p. 54, 59.

No proof of ill-treatment or inhuman treatment of P's at construction sites of Gebechen. -Even in such a case K would not be responsible since he was not the employer. (cf. TZ 99).

100a

- I. Allegation of the prosecution: IPS 876, IPS 912, that K contrary to international law has caused employment of Russian P's which was directly connected with war operations, was not only not proved but even refuted by the Defense:

3 Oct Hitler's speech about necessity to employ Russian P's:
Proc. Exh. 472, Vol. 22, DS 10, 13 10;

- 4 Oct Note in file of General Thomas for verbal report to Goering about employment of Russian P's:
Pros.Bch.472, Vol.22, DS 11, IV No. 1)
ES 10
- 19 Oct K's conference with Kirschner.
- 20 Oct Kirschner's letter to Thomas:
Pros.Bch.473, Vol.22, p.12, ES 12
- 31 Oct OKW order:
Pros.Bch.1287, Vol.67, DS 9/10, ES 10
about employment of Russian P's.

Conclusions from this chronological sequence: Because of time it is impossible that K's thoughts and Kirschner's letter caused the employment of Russian P's, since already before Kirschner's letter the employment of Russian P's had been a decided matter since 3 October. Besides the letter from 20 October could not have reached the highest authorities before 31 October (date of the OKW order):

DE - DPS 5243/47, ZPS 5214/18
testimony of Milch: DPS 5332, ZPS 5308
Kr. Bch. 198, Vol.9, p.117
" 197, " 9 " 113.

Reason for K's train of thoughts: Human help by employment for P's insufficiently accommodated and fed:

DE - DPS 5244, ZPS 5215
DE - DPS 5591, ZPS 5552
Kr.Bch.198, Vol.9, p.117.

- 101 II. No initiative of K to employ P's in construction of fortifications. Employment by orders of the Gauleiters:

DE - DPS 5248, ZPS 5219 to Pros.Bch.481,
vol.22, DS 60, SS 48
No.6.

TZ

102 III. Note in file dated 3 February 1944 - Pros.Ech.1845-
does not show:

- a) either that K ordered employment of P's, suggested confinement of P's in a concentration camp or an establishment of a concentration camp, or
- b) that K had any authority to decide about labor employment.

Cause for the conference: Decision of the Armament Ministry that construction of Heydebreck more urgent than of Auschwitz; on the ground of this decision a directive was issued to the GBA to transfer manpower from Auschwitz to Heydebreck;

DE - DPs 5600, DP 5561
GE - DPs 5576/77, DP 5536/39.

Therefore it was planned (cf. No.3 of note in file) that Duerrfeld should make a request at the NCO and EM PO camp for transfer; this request would not have been necessary if K were authorized to make dispositions concerning P's. It was decided that the 300 P's were to be used for assembly- and not for production-work.

DE - DPs 5600, DP 5561
GE - DPs 5577, DP 5536/39
Kr.Ech.195, Vol.9, p.109
" " 194, " 9, " 105.

This employment admissible according to international law; furthermore there is no evidence that employment actually took place.

TZ

102

III. Note in file dated 3 February 1944 - Pros.Exh.1845-

does not show:

- a) either that K ordered employment of P's, suggested confinement of P's in a concentration camp or an establishment of a concentration camp, or
- b) that K had any authority to decide about labor employment.

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DE - DFS 5600, DFS 5561
GE - DFS 5577, DFS 5536/39
Kr.Exh.195, Vol.9, p.109
" " 194, " 9, " 105.

This employment admissible according to international law; furthermore there is no evidence that employment actually took place.

TZ

103

As to Pres. Exh. 1845 it has to be said that the prosecution arrives at wrong interpretation of the document - like in other cases, too - because it uses standards as if this were a public document made by a notary public which presents the whole situation in legally correct manner and in which errors in writing are impossible. It stands to reason that such standard cannot be used for a document which was not even written by K himself but by a third person for purely internal purposes, this person not being a lawyer but a technician or a merchant. A lawyer, of course, would not have written: K "ordered", although K could not order at all; a request at the NCO and SM PW camp ^(Stalag) as it was just mentioned, was necessary for this transfer allegedly ordered by K.

104

IV. Pres. Exh. 481, Vol. 22, DS 58, ES 47:

K learned about employment of PWs in Gendorf on the occasion of a visit in Gendorf. K did not cause employment; besides employment at construction work not contrary to international law.

105

V. No knowledge of report to Brux, according to which it was allowed to beat French PWs in cases of lack of discipline:

Pres. Exh. 1376, Vol. 70, DS 120/22, ES 33/64.

If K knew this report he would have intervened, of course, although it was outside of his competence.

DS - DPN 5237, EPS 5208.

K's Attitude in the Gelschiefer case is another proof of K's ethical attitude:

Kr. Bd. 123, Vol. 6, p. 73
 " " 124, " 6, " 75.

In addition to that no evidence that in Bruch P's actually were beaten, furthermore no evidence that K participated in any way in the issuing of this order.

Summing up I to V :

According to that no crimes committed by K in connection with employment of F.s.

Sub-section 4: Employment and treatment of concentration camp inmates:

K not responsible for labor allocation of CC inmates at all, nor for the treatment of CC inmates.

I. K did not cause employment of CC inmates at constructions supervised by Gobenhausen.

106

1.) Auschwitz:

a) The allegation of the Prosecution that K had selected Auschwitz as location for Damm in order to be able to employ at the construction CC inmates of this camp was not only not proved but on the contrary refuted:

TZ

Proofs:

Testimony Ambros: DPs 7911, 7838
 " ter Meer: " 7199, " 7142/43
 " Duerrfeld: " 11798, " 11563
 " Gawjowski: " 8323, " 8248.

Construction of Auschwitz commissioned by RM or

OKH:

Fros.Exh.1413, Vol.72, Ds 42, Es 23
 " " 1414, " 72, " 66, " 27.
 Ambros Exh. 220
 (cf. also TZ 107a ad dd at end).

107

b) Goring's order:

Dated 18 February 1941, Fros.Exh.1417, Vol.72,
 Ds 66, Es 39, not caused by K.

aa) K on principle against employment of CC
 inmates:

DE - DPs 5250, 5222/23
 Kr.Exh. 181, Vol.9, p.69
 " " 206, " 9, suppl.4.

bb) Goring's order addressed to Himmler; why
 addressed to Himmler cf.
 TZ 107a ad dd) at the end.
 Only a copy of this order was sent to K and
 three other officials who outranked him by
 far also as to competences. Witness Goernert

(Kr.Exh.114, Vol.6, p.40,
 testimony: DPs 9357/58, 9299/9301)

tells in detail that this order was caused
 by a difference of opinion between K and
 Himmler; the latter supported the employment
 of CC inmates against K's opinion. This
 statement of Goernert confirmed by

Schieber's testimony: DPs 5291,
 5265/66

and the analogous case Fleiger:

Kr.Exh.183, Vol.9, p.73
 " " 184, " 9, " 75.

107a

cc) Prosecution's allegation about K's initiative
 in regard to Goring's order was also sup-
 ported by a reference to the text of Erth's
 letter

TZ

dated 4 March 1941;

Proc.Exh.1422, Vol.72, DS 113, SS 71.

This reference, too, refuted by the above explanations.

To this, further refutation

Kr.Exh.166, Vol.8, p.38,

In this affidavit the author of the letter, 'Irth, also confirms that Goering's order concerning disposition of CC inmates for Auschwitz was not caused by K; the letter dated 4 March is rather an execution of a decision made by Goering. Therefore 'Irth's letter is nothing more than an information to the IG about Goering's order. Simple forwarding of such orders is not a crime; cf. judgment in case VII which did not consider a crime the elaboration by the chief of staff of an army of an order violating international law. (cf. records of case VII, SS 1 0500/01).

- dd) Proof of lacking initiative to employ CC inmates in Auschwitz is also

Proc.Exh.1411, Vol.72, DS 47, SS 27.

This document is a notice in the file about a conference of K with Labros and ter Moor about the start of the construction Buna IV in Auschwitz. This document does not mention in any way the employment of CC inmates it rather stresses the planning of a settlement policy on a large scale in order to settle German workers in Auschwitz. The same idea returns at the end of the document when it says that Himmler has to be contacted as to the settlement of German workers in Auschwitz ~~for 1941-1942~~ (DS 49, ES 48).

The same notion re-appears in the end of the same document: it is stated that Himmler should be contacted with regard to the settling of German workers in Auschwitz (DS 50, ES 28).

This forms a link with the fact that Goering's order from 18 February 1941 was addressed to Himmler under the heading: Measures of population policy for the Buna Works Auschwitz in Eastern Upper Silesia.

K. expressed his views against employment of slave labor and CC inmates after Auschwitz had started to operate; cf. incident in the "G" plan planning:

Testimony Milch: DFB 5226/27, ZF 5303/04
 " Schieber: " 5317, " 5294/95.

cc) Pros. Exh. 2199, Vol. 73, p. 1 does not contain evidence of a possible initiative of K in disposition of CC inmates, on the contrary it establishes that as to the manpower demand also other participating agencies have to decide. Cf. remarks to this exhibit 2199 in the document part.

108

c) No evidence that perhaps K caused employment of zero CC inmates during the construction of Auschwitz. Here, too, rather the contrary proved by the defense. Pohl's letter to Kranefuss dated 15 January 1944 - Pros. Exh. 1513, Vol. 77, Df 182, Zf 86, does not refer to K's initiative.

About meaning and origin of the letter cf.

DE - DFB 5261, ZF 5235
 Kr. Exh. 115, Vol. 6, p. 41.

In 1943 K tried to prevent mass drafts into the Wehrmacht, which started then, of workers essential for his sector. About this "sabotage of the army" Kranefuss contacted Pohl in order to replace workers which were to be drafted into the Wehrmacht by CC inmates.

The "demand rosters" were not a request for CC inmates. They rather referred to manpower lacking at the particular constructions and were sent by the field representative of the Goebbel to the labor allocation authorities. Only exactly Kranefuss came into the possession of these demand rosters is

TZ

shown by

Kr.Exh.115, Vol.6, P.41;

Or, also

Kr.Exh.209, Vol.9, suppl.5,

in which Kranefuss' role in the same connection is discussed.

Summing up:

According to all that there are no objective elements of participation as to CC employment in Auschwitz. Even if objective elements would exist the subjective elements are lacking in ^{view of} state of necessity. K could not oppose employment ordered by Goering:

DE - DE 3 5254, 5410, 5225, 5381/83.

109

2.) Haylebrock:

There was never a concentration camp there:

Kr.Exh.194, Vol.9, p. 105
" " 195, " 9 " 109.

Thus conclusions of the Prosecution from notices in the files dated 3 February - Proc.Exh.1845 - untenable; see also CI - DPS 5594, 5553.

About the importance of such notices made in the hurry of daily routine work as evidence of an offense cf.

TZ 103 and preliminary remarks before the document part.

110

3.) Other constructions supervised by Gebelchen:

No evidence that K caused employment of CC inmates. Here, too, refutation by the Defense:

Kr.Exh.117, Vol.6, p.33
" " 187, " 9, " 80
" " 188, " 9 " 82.

CERTIFICATE OF TRANSLATION

4 June 1948

I, Stanislaw S. FELDMAN, ETO 1043, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Stanislaw S. FELDMAN
ETO 1043.

22

Insofar as concentration camp inmates worked at all on building sites in the charge of the Gebecken - a fact which the prosecution has not at all proved, by the way - this employment cannot be traced back to E's initiative:

Er. Dzh. 116 Vol. 6 Page 4/3.

- 111 a) Letter of E to HIMMLER : Prosecution Exh. 1526, Vol. 79
DS 6 -, ES 53 :

Origin and contents of letter:

DE - DPS 5266, APS 5241

Er. Dzh. 120, Vol. 6, Page 53/54

Letter not dictated by E, but by his collaborator BCKELL. The latter had participated in a conference at HIMMLER's Headquarters about production of rubber from Kok Sags, and in this letter he gives his comments on this conference. BCKELL's affidavit shows that it was not at the order of E that BCKELL brought up the workers question, but that HIMMLER, on his own initiative, offered to supply workers for the building of a factory in connection with the synthetic Buna program which E represented. The wording contained in the letter saying that HIMMLER's intimation, that he would make EZ inmates available for the erection of a further Buna plant, was being welcomed, just constitute a polite phrase for the benefit of HIMMLER who was at that time at the height of his power. The phrase is connected with a statement contained in BCKELL's affidavit, where he says that a tension with HIMMLER had arisen because he was of the opinion that the Gebecken was wrong on rejecting the Kok Sags process;

T2

Therefore it comes within the sphere of camouflage and window-dressing. In addition the writer of the letter had the intention of pinning HINGLER down to his statement that he had dropped the program of manufacturing natural rubber, a program which K considered a mistake. K had no misgivings about this polite phrase, especially as at the time of the writing of the letter no plans had even been drawn up for a further Buna plant, so that the program of procurement of labor for the building of this plant was of no practical importance whatsoever. As a matter of fact, no such Buna plant V was ever built. The letter, therefore, in no way proves the charge preferred by the prosecution, to the effect that K's representative approached HINGLER with a request for an allocation of concentration camp inmates. This fact is explicitly confirmed by KERNEL in his affidavit.

The fact that this interpretation of the letter corresponds to the truth is proved by the quarrel between SPEER, MILCH, and K at the Central Planning Office., as mentioned in T2 98; it took place at the same time, in the summer of 1943. The reason for the quarrel was that K specially emphasized his request for German labor - cf. T2 98. The explanation given here thus tallies with K's basic attitude.

- 113 b) The letter to KERNEL - which was, by the way not dictated by K either - : Pro. Exh. 477, Vo. 22, DS 37, ES 33, does not prove either that K took any steps whatsoever about the allocation of concentration camp inmates.

12

Origin and meaning of the letter:

IE - IFS 5253, IFS 5237/38
 KR 2th. 119. vol. 6, page 49/51 :

After the issue of the GOERING order - of. 12 104 - had made the employment of concentration camp inmates at Auschwitz compulsory, the list of workers employed within the sector of which the Gebechem was in charge had also to contain the number of concentration camp inmates. Therefore it is quite clear and credible that K should designate this letter and the expression "initiative" contained therein in connection with the employment of closed formations, such as prisoners of war, concentration camp inmates, prisoners under the administration of the Ministry of Justice, military construction companies etc., as a defense against the attempts of KRAHL's office to hold K responsible for the fact that the buildings were not terminated in time.

This interpretation of the letter is proved by the fact that the letter - as can be seen from its contents as a whole - serves to meet reproaches made against K, and must therefore be regarded as coming within the sphere of those actions which can be explained by the necessity of camouflage and of countering attacks from political agencies:

In 1944 even the highest agencies, such as the Ministry for Armament etc., began to have doubts about the outcome of the war. This led to a tendency to shift the responsibility for things that had been ~~neglected~~ ^{neglected} on to subordinates, in this case the Gebechemie. K's official in charge who dictated the letter wanted to provide the Gebechem with a kind of alibi to counter the reproach that the Gebechem had taken further steps about the employment of firms, a measure which KRAHL's office considered undesirable, and had done nothing, at all in connection with the employment of closed formations, a field which KRAHL considered decisive.

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TZ

For this reason the matter was put in such a way as if K had taken steps in connection with the latter field and was making further endeavors.

This interpretation of the letter is proved by the other material which has been submitted to show K's general attitude in connection with the employment of concentration camp inmates; for the evidence has shown without a doubt that K's efforts were directed against the employment of KZ inmates - cf. the case Auschwitz: TZ 107 and the quarrel at the Central Planning Office: TZ 98. This is a clear proof of the fact that the wording of the letter of 13th January 1944, according to which K had made efforts in support of the employment of concentration camp inmates, is incorrect. Under such circumstances, however, this letter can not be taken as evidence of the fact that K took any steps ~~about~~ ^{concerning} the employment of concentration camp inmates on any other building sites (in the case of Auschwitz the opposite is clearly proved). In order to show this, the prosecution would have had to provide an exact proof of every individual case in which concentration camp inmates worked on building sites of which K was in charge, and furthermore they would have had to prove that K ^{had} taken steps to procure just these concentration camp inmates. The prosecution has furnished no proofs whatsoever in this connection.

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TZ

As to the importance of such notes, made in haste in the course of the daily routine work, for proving actions subject to criminal punishment, cf. in addition, TZ 103 and the introductory remarks to the part containing the documents.

113 c) Proc. Bzh. 2240, vol. 94, DS 41, ES 45.

Telegram of Gebechen to IG Bitterfeld:

Query of a subordinate department of the Gebechenie as to whether concentration camp inmates could be employed at Bitterfeld. Did not come within the competency of the Gebechen at all as the Gebechen was not in charge of any building being erected at Bitterfeld. KIRSCHNER: Kr Bzh. 309, vol. 9, suppl. 5, therefore connects this telegram with the aforementioned attempts of KRAUPPUS to replace German workers by concentration camp inmates in those producing industries with which K had nothing to do, KRAUPPUS made unauthorized use of a subordinate office of the Gebechen (cf. end of KIRSCHNER's affidavit), in order to carry out his intentions in this case as well.

K only heard about this telegram when it was submitted by the prosecution in this trial. The prosecution has not been able to furnish any proof to the effect that the telegram was sent off with K's knowledge. In addition, it has in no way been proved that concentration camp inmates were employed at Bitterfeld on account of this telegram.

22

114 II. E also took no steps whatsoever about the employment of concentration camp inmates outside the Gelsenkirchen sector; in particular POEL's letter to E of 11 September 1944 - prosecution Exh. 7846 - does not prove this in any way. Contents of the agreement concluded at the instigation of the SS :

Promise of technical assistance to be given to the Oelschlaeger G.m.b.H. in connection with production, and mention of a possibility that the plant might later on be acquired by this company. The agreement means nothing more but that:

GM - IPS 5580/82, IPS 5540/43
 IM - IPS 5501/02, IPS 5563/64
 Kr. Exh. 191, vol. 9, page 100.

Promise of technical assistance to be given to a plant the erection of which had been ordered by the Central Planning Office, and where the SS intended to employ concentration camp inmates for production; no participation whatsoever in slave labor program.

Apart from this, no proof furnished by the prosecution to the effect that production was ever started and that the concentration camp inmates for which the agreement provided had actually ever been employed.

No co-operation of E's in connection with the building of the plant; Gellert RO (Kommissar for immediate measures) is responsible for this;

Kr. Exh. 123, vol. 6 page 63.

According to all this E did not participate in the slave labor program in this connection either.

115 III. E committed no crimes against humanity:

The charge raised by the prosecution concerning the inhuman treatment of concentration camp inmates refers only

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T3

to one building site of which K was in charge, and that is Auschwitz - Monowitz.

Neither was there a proof furnished by the prosecution to the effect that K had instigated this inhuman treatment, nor that he knew of it and permitted it.

In this connection reference is made to the judgment in the MILCH case "Dissenting Opinion" of the Judge Michael A. KESMAREK:

"Concentration camp inmates were made to work, to which there can be no objection on the grounds of inhumanity. In fact, some useful toil is preferable to idleness in prison. But camp commanders were instructed that the employment must be, in the true meaning of the word, exhaustive, in order to obtain the greatest measure of performance."

(L.S. 14 of Dissenting Opinion)
See Final Plea III, count III of the prosecution, 3) number c) aa) at the end.

115a

a) K has no responsibility for the treatment of concentration camp inmates:

On principle the works' management of the firm where the workers were employed was responsible for their treatment. cf. T3 99. In the case of concentration camp inmates there were considerable restrictions *to the effect that* *insofar as* the works' management was only responsible *if* the concentration camp inmates were not subordinated to the SS:

IE - DPS 5259, EPS 5283.

According to this, any responsibility of K's for the concentration camp inmates employed on the building site of Auschwitz must be excluded from the start.

115 b) K had no knowledge of the inhuman treatment of Auschwitz :

aa) During his only visit to Auschwitz K himself saw no incidents of inhuman treatment of concentration camp inmates, nor did he receive any knowledge of such incidents:

Id. - IPR 5268/69, IFS 5243/44
Kr. Exh. 118, vol. 6 page 47.

There is no proof that K received information about Auschwitz through other channels;

115a bb) The so-called Weekly-Report - in some of them inhuman treatment (beating of inmates) is actually mentioned - were not received by K; neither was K informed about the contents of these reports through other channels:

Kr. Exh. 192, vol. 9, page 102
Kr. Exh. 193, vol. 9, page 103

115b cc) No proof furnished by the prosecution concerning K's knowledge of the destruction of human lives, and of the carrying-out of experiments on human beings. (See K's statement that he investigated rumors in this connection and similar rumors about inhuman treatment of concentration camp inmates, but had no success. cf.

Id. - IFS 5367, IFS 5241.

Confirmation of this impossibility of obtaining information, (see testimony of Dr. MURKCH;

IFS 14678, IFS 14342/43
IFS 14673, IFS 14336,

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In particular, it should be pointed out to Your Honors that K and Dr. MURDER agreed in their testimonies concerning the visit of Commissions of the Red Cross to the concentration camps, and the reassuring statements made by these Commissions in this connection :

DE - DPS 5367, MPS 5341/43

Testimony MURDER: DPS 14668, MPS 14329/30 .

117

dd) Proof that K had no knowledge of Auschwitz can be furnished by the defense in no other way than by showing K's moral attitude in a case which is of a completely similar nature.

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TZ

In spite of the fact that this was quite outside the sphere of his competency K took energetic steps and used all his influence in connection with the Gelschiefer incident in Wuerttemberg: cf.

IE - DPS 5275/76, EPS 5249/52
Kr. Bzh. 123, vol. 6 page ~~44~~ 74
" " 134, " 6 " 75

as well as

IE - DPS 5267, EPS 5241.

From this the defense draws the conclusion that K's statement is utterly true, when he says that he could not have known anything of the inhuman treatment at Auschwitz, because otherwise he would have taken steps as in the case of the Gelschiefer plant.

- 117a ee) The fact of K's resistance, and of K's decent attitude which is proved by this resistance, does not exclude the state of necessity.
cf. details of final plea, III, 3, c), bb).

In accordance with expositions under 1.) to 3.) K is thus not punishable either on account of participation in the slave labor program, or in other crimes against humanity.

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TZ

118 Summary of evaluation TZ 1 - 117 a :

K should not be in the dock at all.

- 1.) Clear proof that he kept aloof from the IG since 1933.⁵⁶
cf. TZ 53. Therefore no cause for any charge in connection with the IG.
- 2.) His honorary position in the governmental economic organization is so inferior as to rank and authority, that a charge against K on account of this position should not be tried by the High Nuremberg Courts at all.
 - a) On no account does K come into the category of the government members and confidants of Adolf HITLER who were accused in the IMT Trial.
 - b) In the so-called Ministry Case the lowest rank of the accused officials is that of assistant Under-Secretary of State; K's rank was nowhere near that. It should be remembered that neither in his capacity of Goebbel's nor in that of temporary Chief of the Reich Office for the Extension of Economy ^(RMA) did K constitute the highest governmental authority; cf. TZ 50, 43.
 - c) None of the other Plenipotentiaries of the Four Year Plan have been accused, in spite of the fact that, in contrast to K, some of them were invested with important authorities; cf. TZ 48 a.
(SAUCKEL cannot be quoted as an example here, as SAUCKEL held a special position on account of his being a particular confidant of HITLER's and having been invested with special authorities). cf. TZ 97.

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TE

Fourth Section: Count V of the Prosecution :
Conspiracy for the preparation and waging
of aggressive wars.

Subsector 1 : Conspiracy for the preparation
of aggressive wars.

- 119 I. There is no proof that X had any knowledge of the fact that
his activities were being abused by HITLER for the
preparation of an aggressive war: TE 19 and 23. The Defense
has even proved the contrary: TE ²⁵ ~~18~~. Therefore the
subjective element of conspiracy is eliminated from the
start.
- 120 II. In accordance with the IMT Judgment and the point of view
adopted by the prosecution in TE V, page 7a, the objective
element pre-supposes "co-operation" in the common plan.
This can only apply to "important" co-operation, for other-
wise every non-commissioned officer of the German pre-war
army who might have happened to recognize HITLER's intentions
of attack would have been guilty of participation in a
conspiracy. In accordance with TE 37 to 40, X's participation
was unimportant. Thus the objective element is eliminated
as well.

Therefore there is no criminal responsibility on account of
participation in a conspiracy for the preparation of an
aggressive war.

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Subsceptor 2: Participation in a Conspiracy for the
Waging of Aggressive Wars.

121 I. Subjective element non-existent for 2 reasons:

- 1.) There is no proof that K would have realized that the war was an aggressive war: 12 76;
- 2.) even if he had realized this, the subjective elements furthermore pre-suppose, in accordance with the theory held by the prosecution, that K should have co-operated, heart and soul, with HITLER and his conspirators and should have "taken an active interest in his collaboration". These conditions have not been fulfilled either. K did not believe for a moment that Germany could win the war. In spite of the success of the Norway operation K even then considered the war as lost: 12 - 125 5556, 125 5519. His views on the prospects of the war became drastically apparent by his refusal to comply with the request of the Propaganda Ministry, when (in 1943) they asked him in his capacity of Economic Expert to express his faith in victory in a radio speech:
12 - 125 5409, 125 5380.

It is thus ~~not of the question~~ ^{absolutely impossible} that K took an active interest in the waging of the war, ^{and} as that K co-operated, heart and soul, with the Nazi conspirators,

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For such a behaviour would have meant, in view of K's aforementioned attitude, that K had been interested, "heart and soul" in bringing about the collapse of the German Reich, of the IG, and, in the long run, the destruction of the results of his own scientific research work.

This alone eliminates the subjective elements. Apart from this, the subjective elements must be eliminated on account of a state of necessity.

- II. Objective elements do not exist either;
reasons: cf. TZ 120.

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Enclosure to Closing Brief.

TZ 122: Excerpts from Prosecution Document NO 10192:
Prosecution Exhibit 1567, which are not contained
in the English version of the document; TZ 81
of the Closing Brief.

German page 43, English page 33:

".....Organization of Kontinentale Oel Aktiengesellschaft.

When the Kontinentale Oel AG was founded it was provided that
the Kontinentoel should act primarily as a holding company. For
this reason as well ^{as} for other reasons which must still be
discussed it soon became necessary to found subsidiary companies.

As was already stated by Dr. FISCHER at the last meeting
of the Aufsichtsrat on 27 March 1941, we were at that time on
the point of concluding our negotiations concerning the
acquisition of the majority of the 2 Rumanian Oil Companies
"Concordia" and "Columbia". In the meantime we have acquired
about 50% of the capital amounting to 1,015,000,000.— Lei. We
have obtained the permission of the Rumanian Government to
acquire a total of 62%. We have even now a firm hold on the
major part of the remaining 12%. The capital of the Colombia
amounts to 380,000,000 ^{Lei}. In April we acquired 85.5% of this ,
i.e. 3 5,000,000 Lei. The formal permit of the Rumanian Government
authorizing the transfer of the block of shares of the Colombia
to us has not yet been received.

Apart from our interest in the Concordia and Colombia, we
were given the additional task of administering on behalf of the
Reich 3 smaller Rumanian Oil producing companies which are
the property of the Reich, viz. the Foraky Romanesca and the
Moldona -phs, which had up to now been run by the German oil
companies. It is intended to let the Kontinentoel acquire and to
merge them with the Concordia.

Preparations for this have been set in motion.

For the purpose of administering these considerable Roumanian interests - the production of the afore-mentioned companies amounts to about 23% of the entire Roumanian production - the Kontinentale Oel Gesellschaft m.b.H. was founded in July 1941 with a capital of RM 1,000,000; its Main Office was located in Berlin. For reasons connected with the payment of taxes it became necessary to establish a Branch Office in Bucarest, which deals with all the current business connected with our Roumanian interests. A special report will be made on the development of the Roumanian business.

The Kontinentoel was granted the exclusive right to produce, process, and trade, mineral oil products in the occupied former Russian territories. In accordance with a directive issued by the Reich Minister for Economics on 22 July 1941, the company must carry out the economic measures to be adopted in the field of mineral oils, must, furthermore, take possession of the plants serving the production of mineral oils, and found the subsidiary companies necessary for this purpose

German page no. 58/59

"..... 2.) Ostland Oel-Vertriebs-Gesellschaft m.b.H.

It was possible to take over the Latvian, Lithuanian, and Estonian, sales organizations which had been founded during the pre-Russian period in relative order, so that business is running pretty smoothly by now. The Ostland-Oelvertriebs-G.m.b.H. which was founded for the purpose of taking over the sales organizations has been entrusted with the task of organizing the supply of Wehrmacht and Industry with mineral oil products of all kinds within the territory covered by the Reich Kommissariat Ostland.

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The company has established sales departments with roughly 70 dumps. The turnover in 1941 amounted to about 3,000 tons; it is estimated to reach roughly 30,000 tons in 1942.

The company possesses 2 small lubricant producing factories, one in Riga and one in Revel, which at the time are busy processing the existing raw materials and are to work on the reclaiming of used oils in the future. A cracking installation which is being built at Riga cannot start production for the time being on account of the lack of raw materials.

3.) Ukraine Oel Vertriebsgesellschaft m.b.B. I

The company has been entrusted with the task of organizing the sales of mineral oils in the territory covered by the Reich Kommissariat Ukraine.

(page 6 of original)

The turnover in 1941 amounted to roughly 30,000 tons; it is estimated that it will reach roughly 240,000 tons in 1942. The intention is to establish 57 new dumps in the first instance. With the help of the already existing dumps a considerably higher turnover could be achieved.

4.) Oil territories of Eastern Galicia:

Negotiations with the Generalgouvernement have taken place concerning the taking-over of the oil territories of Eastern Galicia. On the basis of its rights in Eastern Galicia the Kontinental has proposed to the Generalgouvernement that the producing and processing plants located in Eastern and Western Galicia should be administered by a uniform management. It is provided in this connection that the Beskide companies and the Kontinental should participate in the foundation of this new company. The negotiations will probably be concluded within the next few weeks.

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5.) Oil Territories of Romny

The wide-spread expectations that the Romny oil territories would be of considerable importance have not been fulfilled. Preparations for the exploitation of the territory are now being made. Production on any considerable scale can not be expected in the near future. It will have to be decided later on which one of the managing companies should administer this territory.

6.) Ost Oel Gesellschaft m.b.H.

The preliminary work for the restarting of production in the Caucasian oil territories is being carried out by the Ost oil Gesellschaft m.b.H.

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Second part: Comments in catch words on every single document
which might concern Dr. KLAUCH.

Introductory Remarks.

- I. Every language may seem inexact and superficial on many occasions. This phenomenon becomes even more apparent if a translation is necessary. In such cases, even more than when we use our own language, we have to depend on a kind of ~~own~~ ^{key} language which vibrates through the spoken or written word, and which is often more effective than anything we could say. The way in which Your Honors conducted this trial justifies our hope that this invisible language will constitute a successful interpreter who will have to supplement ^{the} frequently inadequate written or spoken words, be they in the language of the Court or in that of the defendants, or of the defense counsels.
- II. Starting off from this general consideration, the attention of the Court should be drawn to the following facts: A considerable part of the prosecution material consists of letters and other documents which were written by the defendant K., his collaborators, or even by some third parties who were outsiders. For several reasons it is not advisable, when considering the ~~probative~~ ^{probative} value of these documents, to use the same measure as in the case of documents which were written by a ~~lawyer~~ ^{lawyer} in order to be used as evidence in legal transactions.

- 1.) Neither I., nor his collaborators, nor the other authors of the documents are lawyers, but technicians or merchants. If they were lawyers or had a legal training, or if they had worded their written statements with the help of a lawyer, they would have often chosen different and more precise expressions.
- 2.) Almost all the documents were written hastily amid the bustle of the day's work, which was even greater during the war than in peace time. This, too, was a reason for a way of expression which is often inexact from a legal point of view.

This applies in particular to those documents which consist of memoranda to the files, or notes about discussions, and which it was not intended to make public. In these cases the author, under the strain of his daily work, let himself go even more and did not choose his expressions carefully.
- 3.) In the case of other documents the author had by no means such a complete and comprehensive knowledge of the facts and their connections discussed therein as the exact lawyer would have made it his business to obtain before writing such a letter or document.
- 4.) In several cases the actual facts were purposely camouflaged for political reasons and were expressed in an equivocal or unclear manner. Such cases occur frequently in the course of general commercial business life. I refer as an example to the method of getting rid of undesirable employees by praising them to third parties (giving the employee a good reference which one knows to be untrue).

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The defense therefore urges Your Honors to consider all these points when evaluating the documentary material, bearing in mind the principle: "In dubio pro reo".

In those cases, where a document has already been dealt with in the first part (arranged according to subject matters) reference is made to the number in the text (Textziffer, TS.....).

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Exh. No. 4, vol. 1, DS 19, ES 23

cf. TZ 20

Exh. No. 11, vol. 1, DS 89, ES 80

Essay Hennenbruch. Nothing about intentions of waging a war.

Striving for national independence in the field of raw materials not a punishable offense according to Control Council Law No. 10.

Exh. No. 13, vol. 1, DS 107, ES 91/93

cf. TZ 56.

Exh. No. 20, vol. 2, DS 117, ES 123.

Essay Dr. Kieseppeter. What was said about Exh. 11 applies in this case as well.

Exh. No. 21, vol. 2, DS 122, ES 125.

HITLER speech of 1st May 1937 does not contain anything about his intentions to wage an aggressive war. Who could have realized from his words about the achievement of national independence in the field of raw materials, which was stressed in this speech, that he intended to wage an aggressive war?

Exh. No. 22, vol. 2, DS 123, ES 126.

K's efforts to counter the young people's tendency to prefer military professions, and to draw their attention to scientific research as a means to strengthen Germany's position in economic life.

Exh. No. 23, vol. 2, DS 133/35, ES 131/3.

Excerpt from the Frankfurter Zeitung of 30 October 1936. Does not contain any statement or intimation to the effect that the Four Years plan was drawn ^{up} for the purpose of waging an aggressive war. In addition cf. TZ 54.

Exh. No. 24, vol. 2, DS 136, ES 133.

Report of Oil Division of USA Strategic Bombing Survey, January 1947. Confirms the fact that Germany was not armed for war by stating that at the outbreak of war only negligible quantities of gasoline for planes, and motor vehicles, rubber, or Tetra-ethyl lead were available. cf. TZ 60, number 6

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Exh. No. 30, vol. 3, DS 50, LS 35.

Affidavit K. confirms K's statement to the effect that the conclusion of the Feder-Bosch Gasoline Agreement 1933 was governed by peacetime considerations: TZ 55 a.

Exh. No. 34, vol. 3, DS 84/85, LS 59.

cf. TZ 11.

Exh. No. 78, vol. 4, DS 27, LS 20.

K. had nothing to do with contributions: IS - DS 5181, LPS 5158.

Concerning Adolf HITLER contribution see basic information of the defense: Defense exh. 776, vol. 2 page 6.

Exh. 89, vol. 4 DS 118 LS 86.

Minutes of the meeting of the T., no comments.

Exh. No. 90, vol. 5, IS 1, LS 1.

The memorandum mentioned in the notes on the conference (IS 4, LS 4) has not been submitted. K's letter accompanying the memorandum (prosecution Exhibit 138, vol. 6, DS 24, LS 16) shows that the memorandum had nothing to do with war or aggressive war, but was nothing more than an expert opinion about possibilities of providing employment and the investments required for that purpose: DE-DS 5064, LPS 5043-4.

Exh. No. 99, vol. 5, DS 79/81, LS 77/8.

Exh. No. 100, vol. 6, DS 38, LS 24.

Exh. No. 101, vol. 5, DS 82, LS 80.

cf. TZ 68

Exh. No. 102, vol. 5, DS 85, LS 82.

cf. TZ 68/72.

} of TZ 68

Exh. No. 104, vol. 5, DS 113, AS 103.

cf. TZ 73.

Exh. No. 127, vol. 5, DS 198, AS 162.

Proves in no way the assertions of the prosecutions.

Exh. No. 128, vol. 5, DS 203, AS 157.

Proves in no way the assertions of the prosecutions.

Exh. No. 130, vol. 5, DS 209, AS 172.

Report submitted to Goering by Colonel Loeb, the Chief of the Office for German Raw and Industrial Materials. Proves that Goering kept his aggressive intentions secret even from Colonel Loeb, who was superior to K., and that the alleged purpose of the Four Year Plan which he mentioned to Loeb was that of liberating Germany from the necessity of importing (in order to save foreign exchange) (DS 209, AS 172). Proves further that the planning for an extension of industry did not only take peace-time requirements into consideration, but war requirements as well. It is, however, customary in all countries to consider wartime requirements. This does not constitute a proof, therefore, of K's knowledge of aggressive intentions. In addition, the prosecution did not furnish the proof which they promised in DPS 394, LPS 410/1 of the transcript, according to which K is alleged to have been the author of the plan for the establishment of the Reich Research Council (Reichsforschungsrat). Even if the prosecutions' assertion in this connection were correct, no criminal responsibility would be proved thereby.

Exh. No. 131, vol. 5, DS 218, AS 178.

Is a document from the year 1943. It cannot be seen in which way this document could be used for proving intentions of waging an aggressive war.

Exh. No. 138, vol. 6, DS 24, AS 16.

See remark about prosecution Exh. 90, as well as DS - LPS 5065, LPS 5044/5. Supplementary remark: no proposition of K's for a Four Year Plan similar to the one which Goering drew up in 1936.

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The expression "Four Year Plan" is nothing more than an indication of the calculation on which the plan for an increase of gasoline production was based in 1933. The receipt of instruction and training material for the Luftwaffe in the form of diagrams showing motor car engines does not prove K's knowledge of aggressive intentions.

Exh. No. 140, vol. 6, DS 42, ES 28.

Struss' assertion that Kitter had not been able to sign this document, because he had not been granted power of attorney to sign, was refuted by Wagner's testimony. DS 550, ES 578. In addition see TZ 68 to 72.

Exh. No. 148, vol. 6, DS 93, ES 64.

cf. TZ 69 to c).

Exh. No. 163, vol. 6, DS 122, ES 77.

Imposition of a pledge of secrecy in connection with matters which must be kept secret in the interest of the country's defense is a customary measure in all states. No proof of knowledge of aggressive intentions.

Exh. No. 169, vol. 7, DS 25, ES 10.

The order to treat poison patents as a "top secret matter" could only be given by the Wehrmacht (Reference to the 3 grades of secrecy in the USA: Restricted, Secret, Topsecret). The fact that the IG obeyed this order in no way proves the assertions of the prosecutions. Remarks concerning the fact that applications for permits to grant licences, and make processes available, to foreign countries had to pass through the channels of the V/W, cf. TZ 69 to d).

Exh. No. 171, vol. 7, DS 38, ES 19

Exh. No. 174, vol. 7, DS 46, ES 23.

Exh. No. 178, vol. 7, DS 55, ES 30.

} cf. TZ 71

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CERTIFICATE OF TRANSLATION

3 June 1948

I, Julia KIME, Civ.No. 20 185, hereby certify that I am
a duly appointed translator for the German and English
languages and that the above is a true and correct trans-
lation of the original document.

Julia KIME
Civ.No. 20 185.

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Compare to all TZ 71

Exh. No. 190, vol.7, DS 112, SS 64

Compare TZ 72.

Exh. No. 199, vol.8, SS 23, SS 27.

December 1937. K at the time when this letter is written head of the Department Research and Development since 1 1/2 years. In spite of the fact that since 1936 he was not any more active as a member of the Vorstand and that in matters of the Sparte I he was represented by Schneider (TZ 63) it still occurred that occasionally one of his former IG-collaborators asked for his advice. This was the case mentioned in SS 27, SS 28/29, which, therefore, does not prove that K did not keep out of these matters since 1936.

See in this connection TZ 63 to 64.

Exh. No. 209, vol.8, DS 50, SS 48.

No evidence proving K's knowledge of Hitler's plans of aggression

Exh. No. 217, vol.8, DS 60, SS 67.

Proves that

a) order for development work regarding D mustard gas experiments ^{by H.G. and even before} had been issued already before K's appointment as Gebechem (SS 60, paragraph 4, SS 67 paragraph 4),

b) that the decision to list D mustard gas experiments among the urgently needed construction projects was not made by K, but by Goering. Letter is no proof for the fact that K had power of attorney: Compare TZ 47 and 49 and DL, DS 5125, SS 5104. See TZ 73 regarding poison gas production by the I.G.

Exh. No. 267, vol.10, SS 55, SS 42.

Working staff "Chemistry" was not subordinated to K, but to the Reich Office "Chemistry". Records of the conference confirm K's statement

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that not K, but the Reich Office Chemistry had the authority to make decisions regarding the number of labor forces required for production, in particular for the mobilization production (DS 59, LS 45).

(DS 57, LS 43)

K had pointed out the problem of by-product acid/.By-product acid was formerly permitted to flow off, thus making it necessary to procure new acid and therefore foreign currency for the import of pyrites. Proof of K's activity in the Department Research and Development, introducing new methods.

With regard to proposals made by the (K) to K, concerning the transfer of apparatus from Ludwigshafen to the East, see comments to prosecution exhibit No. 268.

Exhibit No. 268, Vol.10, DS 41, LS 32.

It results from these exhibits that it was General Thomas, and not K, who approximately one year before the outbreak of the war had suggested at the IG Works Ludwigshafen to create possibilities for the evacuation and transfer of production and to work out a corresponding plan for evacuation. This plan, which also included the evacuation and transfer of the entire works, was not taken serious by the IG, because it was practically impossible to carry it out.

No proof of K's knowledge of Hitler's plans of aggression.

Exhibit No. 270, vol.9, DS 156, LS 121.

Working staff Chemistry was subordinated to the Reich Office Chemistry, with which K had nothing to do. DS 160, LS 121b, refers to the order issued by the RWA at the outbreak of the war, to the effect that work be suspended at the Ludwigshafen and Oppau Work. The fact that K's name does not appear in this connection proves that K was only concerned with construction matters, not with the production.

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Exh. No. 272, vol. 9, DS 172, ES 128.

AM 1 was no poison gas but special fuel^{for}/air-plane motors.

Exh. No. 274, vol. 9, DS 186, ES 140.

Does not prove anything concerning K's knowledge of Hitler's plans of aggression.

Exh. No. 300 vol. 11, DS 130, ES 110.

No comments.

Exh. No. 301, vol. 11, DS 133, ES 113.

K's curriculum vitae. It is incorrect, as far as the statement is concerned that K was head of the Department Research and Development since 1930; the correct date is 1936.

Exh. No. 330, vol. 12, DS 75, ES 91.

Affidavit for Keer. Confirms K's statement that he denied Gauleiter Spengler's request to take into the Vorstand and Aufsichtsrat prominent nazis. With regard to K's keeping aloof from the I.G. see TZ 63 to 65.

Exh. No. 333, vol. 12, DS 95, ES 114.

Report on the organization of the I.G. No comments.

Exh. No. 334, vol. 12, DS 107, ES 126.

Proves that

a) industrial development after 1933 was a consequence of the measures for the procurement of employment (DS 112, ES 132/3);

b) that until the outbreak of the war the I. G. did not make any important contribution in the field of the development of poison gas as a consequence of its negative answer to the request by HWA for the development of new means for chemical warfare. (DS 117, ES 138),

c) V/W mail head office was (DS 118, ES 140),

d) that the Gasechemie's placing at disposal of I.G. employees was nothing unusual, that ICI assigned in England also appr. 2500 of its

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employees to government duties.

Exh. No. 338, vol. 12, DS 161, SS 181.

No comments.

Exh. No. 341, vol. 12, DS 189, SS 207.

Does not prove anything in the sense of the indictment, and K did not make any use of his right (DS 190, SS 208) to participate in conferences of the central committee. 12 63.

(The English translation contains an error: it states that K continued to participate in the conferences, while the German original states: K could (therefore theoretically) participate in the conferences.

Exh. No. 342, vol. 12, DS 195, SS 213.

Does not prove anything in the sense of the indictment.

Exh. No. 343, vol. 12, DS 218, SS 237.

No comments.

Exh. No. 344, vol. 13, DS 1, SS 1.

The fact that K received a statement of its position of the sparte II concerning the pending negotiations with Russia in 1939 does not prove anything against I in the sense of the indictment.

Exh. No. 345, vol. 13, DS 12, SS 8.

Tea-conference 19th, month and year uncertain, probably however, 1940. Activities in the Eastern zone, Auschwitz and Buerstengrube. K did not participate.

Exh. No. 348, vol. 13, DS 32, SS 24

Exh. No. 349, vol. 13, DS 37, SS 28

Enlargement of the Buna installation Huelo. No proof for K's knowledge of plans for aggression. Besides K was in 1938 not yet Commissioner of the LAW,

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mentioned in the records of the conference of the Aufsichtsrat.

Exh. No. 358, volume 13, NS 135, SS 75.

No comments.

Exh. No. 382, volume 15, NS 1, SS 1.

No comments.

Exh. No. 383, volume 15, NS 11, SS 7.

No comments.

Exh. No. 384, volume 15, NS 12, SS 9.

No comments.

Exh. No. 385, volume 15, NS 17, SS 16.

In case K actually still participated in two conferences of the working committee, this does not prove anything against his keeping aloof of IG matters, which is proven by many facts. The participation occurred probably in connection with some duties of representation, in honor of an old collaborator or something of that sort.- see T' 63/64.

Exh. No. 386, volume 15, NS 19, SS 18.

No comments.

Exh. No. 391, volume 15, NS 71, SS 65.

Affidavit STRUBS concerning organization of the IG proves that K kept aloof from IG. (NS 120, SS 105).

Exh. No. 395, volume 15, NS 151, SS 131.

Affidavit von HRIJER. The fact that the committee for chemical products sent after 1940 records of its conferences to the office of the Central Committee for forwarding to K does not prove anything against K's keeping aloof from the IG.

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Exh. No. 400, volume 19, DS 1, ES 1

The records prove that K did not participate in this conference. Besides, mineral oil is only one of the eight raw materials under discussion, of which the demand could not be covered without import (DS 3, ES 2). The fact that Goering, as a soldier, emphasized in this conference the importance of gasoline production for the case of war does not prove K's knowledge of Hitler's plans for aggression.

TV 7 ff.; 24 - 35.

Exh. No. 401, volume 19, DS 34, ES 30.

The records prove that K did not participate in all these conferences of the Ministerial Council. Was only present at the Goering speech (volume 19, DS 51/56, ¹⁹³⁸ ES 64/7) of 14 October in the Reich Air Ministry. See TV 12 in this connection.

Exh. No. 402, volume 19, DS 103, ES 73.

Confirms K's statements:

- 1.) DS - DRS 5009, PFF 5068, that K was appointed to the Raw Material and Currency staff, following a suggestion by WORMER.
 - 2.) DS - DRS 5105, PFF 5086, that planning was done by IOEB, not by K.
- See TV 61 / 62 with regard to Marshall project.

Exh. No. 403, volume 19, DS 108, ES 76.

Confirms K's statement that Bosch suggested his appointment to the Raw Material and Currency staff (DS 109, ES 76/7). GRITZNER's assertion to the effect that K always participated in the conferences of the Generalstaff (DS 110, ES 77), is refuted by prosecution exhibit 466, volume 21, DS 201, ES 182. See comments to this. Assertion DS 109, ES 77, Goering had invited K to all important conferences and meetings is refuted through prosecution exhibit 401. See comments in this connection. It also confirms K's statement that planning was not done by K, but by

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Department Planning (Colonel Loeb) T⁷ 61. With regard to Kerinball Plan and Schnellplan see T⁷ 61/62.

Exh. No. 404, volume 19, DS 116, ES 82.

Confirms K's statement: DE - DPS 5063, EPS 5042/3.

Exh. No. 405, volume 19, DS 118, ES 83.

K's expert opinion contained in this document and the statement of his position regarding the Dieckhoff method offered to the German government are no proof in the sense of the indictment.

Exh. No. 406, volume 19, DS 122, ES 86.

K's conventional letter of acknowledgment does not contain any proof of K's knowledge of the plans for aggression.

Exh. No. 407, volume 19, DS 123, ES 87.

Does not contain any proof in the sense of the indictment.

Exh. No. 409, volume 19, DS 126, ES 89.

Exh. No. 410, volume 19, DS 128, ES 91.

Do not contain any proof in the sense of the indictment.

Exh. No. 411, volume 19, DS 129, ES 93.

Hitler's memorandum concerning the Four-Year-Plan. See T⁷ 13/ 54a.

Exh. No. 412, volume 19, DS 148, ES 114.

Proves that Hitler referred again and again to the bolshevist danger as to reasons for armament (DS 149, ES 115).

Exh. No. 415, volume 19, DS 167, ES 138.

Carrying-out decree for the Four-Year-Plan. No comments.

Exh. No. 417, volume 19, DS 189, ES 139.

It can not be easily understood, how K's knowledge of Hitler's plans for aggression may be deducted from a public speech held by Funk

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after the outbreak of war, in which he emphasizes for reasons of propaganda the importance of the Four-Year-Plan for the war economy.

Exh. No. 418, volume 20, DC 1, ES 1.

It is clear that the Minister for War emphasizes the tasks of the Four-Year-Plan with regard to his field of activity "in relation to the war industry" (DC 2, ES 1). E has never denied that the Four-Year-Plan included also rearmament. This is however, no proof of K's knowledge of Hitler's plans for aggression. With regard to the importance of the sector under K's charge to the peace economy see comments to prosecution exh. 455.

Exh. No. 419, volume 20, DC 4, ES 2.

No. 5 of War Industry Informations of 1943. This document does not contain any proof of Hitler's plans for aggression, even less proof of K's knowledge of these plans.

Exh. No. 421, volume 20, DC 58, ES 9.

Goering gives in the introduction a "brief survey of world policy in connection with the dangers of bolshevism and world revolution" (DC 59, ES 9). All statements by Goering refer therefore, only to a possible defensive war against Russia. See also T 11.

Exh. No. 422, volume 20, DC 68, ES 14.

Koerner's statement concerning the Preussnerhaus speech. See T 7 11.

Exh. No. 425, volume 20, DC 71, ES 19.

Organization of the Four-Year-Plan. Proves that the Department Research and Development had nothing to do with the Department "Planning".

Exh. No. 426, volume 20, DC 78, ES 20.

Proves that the activities of the Department Research and Development included many projects which had, as a prerequisite for their carrying-out, conditions of peace.

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Exh. No. ⁴⁴⁷~~431~~, volume 20, D¹~~94~~¹, ES ¹~~28~~.

Loeb's construction deadlines, so-called bible: DS - DPS 5105, EPS 5086.

Exh. No. 431, volume 20, DS 94, ES 28.

Statements by Loeb. Definite proof of the fact that K was active as chief of the Department Research and Development merely in an advisory capacity, without any authority to make decisions on his own. "The Department Research and Development consists of men who offer the best possible guarantee for advising the superiors responsible for the decisions in a realistic and objective manner" (DS 99, ES 30).

Loeb's statements ~~abroad~~ were also of importance. ^{also abroad} He stated that everywhere the opinion prevailed, that it had to be expected "that war would start with an enemy air attack on our country without any preceding warning through a declaration of war" (DS 101, ES 31). This refers obviously to Russia, in which connection Czechoslovakia was considered as the aircraft base. This is confirmed by K's statement according to which he believed that the purpose of the preparations for war was to defend Germany against a threatening attack by the bolsheviks, in case Germany remained a military victim. See T¹ 16.

Exh. No. 432, volume 20, DS 104, ES 39.

Coering requests increase in the iron-ore production and answers objections that after the end of the war production, no markets for iron would be available, by referring to markets in China and South America (DS 114, ES 42). This reference demonstrates in particular that Hitler did not carry out any project of aggression with his war production.

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Exh. No. 433, volume 20, DS 130, ES 44.

Goering's statement to the effect that the Four-Year-Plan was to safeguard freedom and independence of the nation does not represent any proof of Hitler's plans for aggression, even less for K's knowledge of these plans.

Exh. No. 434, volume 20, DS 131, ES 45.

No comments.

Exh. No. 435, volume 20, DS 134, ES 49.

Proves that F7A was subordinated to RWM and that the Department Research and Development had nothing to do with the Department Planning and Execution (DS 135, ES 50).

Exh. No. 436, volume 20, DS 138, ES 52.

Report of the Department Planning concerning the projects of the H 7A in the field of powder, explosive and poison gas, with special consideration of primary products. K's Department Research collaborated in the writing of the report and gave its expert opinion. No proof of knowledge of Hitler's plans for aggression.

Exh. No. 437, volume 20, DS 152, ES 63.

The fact that RWM ordered at the outbreak of the war that production be stopped at the Ludwigshafen and Oppau Works (without informing K about it) which would have resulted in a loss of one half of the entire nitrogen production, proves that K as Gebschke had nothing at all to do with production and that his activities were very restricted.

Exh. No. 438, volume 20, DS 180, ES 82.

Draft by Jahnke. " never received the draft. The critical remarks regarding the inefficient organization of the German authorities in charge of explosives and chemical warfare contained in the draft and the reference to the efficient and smoothly-functioning English organization in the same field is no proof

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of K's knowledge of the plans for aggression:

Ex. - DPs 5116/19, 145 5097.

It results, furthermore from the draft that the installation for poison gas production in Trostburg was already planned in 1937 through the RM (DS 181, LS 83). That Ambros was, furthermore, also of the opinion that the armament was intended for defensive purpose (DS 182, LS 84). Statement to the effect that the IG made proposals for the development of new types of poison gas is explained by the fact that during experiments in the field of the combatting of various new gases were discovered; the formulas of these gases had to be reported to the RM in accordance with existing regulations. Compare DI Boerlein - DPs 6279/80, 145 6223.

Ex. No. 139, vol. 20, DS 184, LS 85

"Klaug had requested speeding-up of constructions, memorandum indicates technical possibilities for this purpose. Proof of K's position as expert.

Ex. No. 140, vol. 20, DS 193, LS 95.

Statements of the expert A, concerning the (technical) "possibilities of the maximum speeding-up" of the Schmalplan. He firms K's statement according to which he had no authority whatsoever to make decisions, that in each case a decision of the officers concerned was required (DS 194, LS 96).

Ex. No. 141, vol. 20, DS 238, LS 113.

Demonstrates that the project of the "new production plan" was drawn up by GUBINE and was not K's idea (DS 239, LS 114). A listing of the mobilization figures for 1943/1945 does not represent, in itself, proof that K had recognized that the new production plan (also called Karinhall plan, plan for war production or plan for chemical production)

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served a war of aggression planned by HITLER. It is the usual practice in all nations to take into consideration the mobilization requirements.

It is interesting to compare the figures for peace requirements for 1942/1943, on which the Kerrinball plan is based. This comparison can be made by comparing prosecution exhibit 442, vol. 20, DS 239, IS 113, and prosecution exhibit No. 455, vol. 21, DS 111, LS 56:

	peace requirements according to exh. No. 442, vol. 20, DS 239, LS 113:	Mobilization re- quirements according to exh. No. 455, vol. 21, DS 111, LS 56:
automobile gasoline, aviation gasoline, and Diesel fuel	8.5 million tons yearly	9 million tons yearly
	peace requirements according to exh. No. 455, vol. 21, DS 138, LS 56:	Mobilization requirements according to exh. No. 455, vol. 21, DS 138, LS 56:
3000	140 000 tons yearly	120 000 tons yearly

The report emphasizes in this connection exh. No. 455, vol. 21, DS 138/139, LS 56 - that the lacking quantities must be procured through import of natural rubber. This proves that the establishing of the mobilization figures was not the decisive point.

Exh. No. 443, vol. 20, DS 244, LS 117.

Manuscript of a book by General Thomas. It is obvious that Thomas, as a general, judged all measures from a military viewpoint. He does not care whether armament served aggressive purposes or not. I did not even know of Thomas' statements.

It results from IS 251, LS 121, that the powder and explosive project was not worked out by K.

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Exh. No. 444, vol. 21, DS 1, SS 1.

Contains measures for the carrying-out of the Carinell plan and of the Schnellplan. No proof of K's knowledge of HITLER's plans for aggression. See TE 15.

Exh. No. 445, vol. 21, DS 3, SS 3.

Contains nothing concerning plans for aggression. See TE 16.

Exh. No. 446, vol. 21, DS 9, SS 8.

Power of attorney of the Plenipotentiary was not valid with regard to K. TE 47 to 49.

Exh. No. 447, vol. 21, DS 11, SS 10.

Confirms K's statement: IM - DPS 5116/9, PS 5094/6, that K was responsible for the field of the Schnellplan and that Kettel had objected to it K's being placed in charge of this field.

Exh. No. 448, vol. 21, DS 13, SS 12.

K states in this letter his position as "advisory technical expert" regarding K's plan to construct emergency installations for Toluol, diglicol and oxol (DS 14, SS 12/3). K suggests that existing possibilities for production be exhausted before new installations are constructed (DS 15, SS 13/4).

With regard to toluol, K points to his previous suggestion not to construct any new toluol factories, but to obtain toluol from motor benzol in which it is contained and to store it, instead of burning it ^{in the motor}. It could then be used for peace time purposes, as well as for war production. K's proposal was that ~~there~~ ^{therefore}, not to construct additional factories. This did not advance the preparations for war, rather hindered them. See IM - DPS 5475/7, LPS 5445.

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It results, furthermore, from the document that K had nothing to do with the planning, but that his task was, merely, to point out the technical possibilities for obtaining the aims indicated by the Wehrmacht (DS 21, LS 17/8) therefore an advisory capacity.

Dok. No. 445, vol. 21, DS 23, LS 19.

Proves that until August 1938 the planning for the P and S sector was made by the RWM without the required contact with experts in the field of the chemical industry (DS 23, LS 19), and that K was subsequently invited as an expert; ^(DS 23, LS 19) it proves furthermore that K stated his expert opinion regarding the number of the required labor forces (DS 30, LS 25/6).

Dok. No. 450, vol. 21, LS 33, LS 28.

The fact that the IG hesitated to inform the Reich Office for Economic Development about new methods, because it feared that the RWM would pass them on to competitor firms, demonstrates, how well aware the IG was of the fact that K's attitude was objective and that he was keeping himself aloof from the IG. K was at that time the Chief of the Department Research and Development in the RWM. He would have been the person to whom the methods had to be submitted.

Dok. No. 451, vol. 21, LS 35, LS 29.

K's keeping himself aloof from the IG which had been proven in ZZ 63, is not refuted by the fact that he occasionally informed the IG about a remark of the RWM concerning the Reich Citizenship Law.

Dok. No. 452, vol. 21, DS 41, LS 34.

Report on the state of the constructions decided on by the Schmolzplan does not prove K's knowledge that those constructions were carried out for the purpose of a war of aggression.

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It results from IS 49, LS 36, that K was not authorized to fix the quotes.

Doc. No. 453, vol. 21, IS 67, LS 41.

Stoltzenberg was on bad terms with the KdA, was not permitted to enter their offices, attempted to propagate his ideas in other offices. He therefore sent the memorandum also to the Gebocham, where it was filed and given no further attention.

Doc. No. 454, vol. 21, IS 81, LS 51.

Confirms that K had nothing to do with the planning, and that GDLING, not K, decided the construction aims contained in the Marinelli plan (IS 81, LS 51), and that further aims for constructions were ordered upon "requests by the Fuehrer" resp. upon construction orders by the OKW (IS 83, LS 52).

Doc. No. 455, vol. 21, IS 86, LS 56.

Compares TZ 61a and TZ 15.

Doc. No. 456, vol. 21, IS 185, LS 108.

The prosecution's assertion (DPS 855, LPS 899/900) that K was holding a full position in the IG until the end of April 1939, refuted by CE 43, I refer in this connection also to introduction to Part II of the OL.

States that IS 187, LS 110, according to which K caused the revision of the Buna credits jointly with von Weiz and Schmids, are incorrect. K's action in this matter consisted merely in the issuing of an information.

Confirms for the rest K's statement: IS - LS 5476, LPS 5476.

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according to which talcum may also be used for peace time purposes (production of eye-stuff) (DS 185, LS 109).

Exh. No. 457, vol. 21, DS 196, LS 109.

Definite proof of the fact that K had no authority to decide on labor allocation, but only gave his expert opinion on the labor requirements of the individual construction works. See also TZ 38c number 1.

Exh. No. 458, vol. 21, DS 197, LS 110.

List of Schnellplan constructions which the GfA had ordered to be continued also in case of war. Compiled by the Gabecken after the outbreak of the war upon proposal by Gott. Exh. No. 457, vol. 21, DS 196, LS 109, in order to provide local labor offices with a basis for decisions as to the firms which were to be considered most urgently with regard to labor requirements. Confirms the fact that K could not decide on labor allocation.

Exh. No. 459, vol. 21, DS 217, LS 132.

Proves in particular the fact that K could not fix the quotas: DS 219/20, LS 132/3.

Exh. No. 460, vol. 21, DS 226, LS 133.

The fact that General Thomas discussed with K after the outbreak of the war the possibilities for an increase in production in the field of P and S, as well as the production of mineral oil and light metal, does not prove anything in the sense of the indictment. Of course Thomas had to consult K as an expert with regard to the construction projects planned by the office for war production and armament: See IL - DRS 5213/14, LPS 5185.

Exh. No. 461, Vol. 21, DS 246, LS 158.

Proves only that

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- a) Demands for explosives and poison gas production did not come from E. but from general staff (Dc 251, LS 160),
b) that E was not authorized to allocate quotas of iron and steel to the constructions with which he was entrusted. (LS 453, ES 161/2).
Exh. No. 452, vol. 21, LS 265, LS 169.

Confirm E's statement: DE - LPS 5141/42, LPS 5118, according to which EWA was subordinated to the RM. Proves furthermore that EWA, not RWA had to decide on planning.

Exh. No. 453, vol. 21, LS 278, LS 172.

No other letter demonstrates so clearly the confusion which prevailed. LS 279/70, LS 172/3 states:

"Preparations for new projects"

"... that the Reich authorities, not the Reich Office, but for instance the economic group Chemistry prepared new projects within the scope of its activities. Point 3 "Planning" states, however, that the Reich Minister for Economy is charged with the planning. The chief of the Reich Office for Economic Development has only an advisory capacity. The letter originated from the situation that members of the Armament Ministry wanted, for personal motives, to play a leading part. One has to be acquainted with these personal controversies. With regard to the term initiative the wording is very peculiar. Indeed On principle none, it states, however, in the following: the initiative belongs, however, in most cases to the Gesamten, which is immediately followed by the restriction: Decision of the Reich Minister for Economy.

All this demonstrates, therefore, that E depended on higher offices, even at the time of the letter in 1943.

Exh. No. 454, vol. 21, LS 278, LS 173.

Compare TZ 65.

Exh.No.465, Vol.21, DS 279, ES 180

Anonymous, and for this reason alone already no evidence; letter of denunciation which was intended to persuade Hitler to nationalize IG. Lammor's accompanying letter proved distrust of the authorities towards IG. See also TZ 65.

Exh. No.466, Vol. 21, DS 281, ES 182.

According to this document, K was present only at five of the eleven conferences of the Generalrat which took place until June 1941.

It does not result from this document whether K was present at any of the conferences of the Generalrat, which took place after June 1941. Thus assertion of the prosecution DPs 572, ES 908 that K had "participated" practically in all conferences of the Generalrat, refuted.

Exh. No.467, Vol. 21, DS 341, ES 197.

Use of the password K in order to designate a certain degree of urgency for priority at railway dispatching of goods during the war does not prove anything with regard to K's participation in a war of aggression.

Exh. No.468, Vol.21, DS 343, ES 55.

No comments.

Exh. No.469, Vol.22, DS 1, ES 1.

Conference in Kassel concerning the arrangements for the F and B construction projects. No special arrangement concerning the Schnellplan. Demonstrates great interest in social care by Krauch representatives.

Exh.No. 470, Vol.22, DS 5, ES 5.

See comments to Exh. No.467.

Exh. No. 471, Vol.22, DS 7, ES 7.

K gained knowledge of this document only in Nuernberg:

DE - DRS 5168, ZFS 5144.

Exh. No.472, Vol.22, DS 10, ES 10.

Compare TZ 100s

Exh. No.473, Vol.22, DS 12, ES 12.

Compare TZ 100 a.

Exh.No.474, Vol.22, DS 13, ES 13.

The fact that K's sector was always short of 20,000 to 40,000 workers (DS 15, ES 15) proves that K, in spite of his high-sounding title, had no power and authority to make decisions, but was only an advisor and expert, because otherwise he would have procured the lacking workers. Reference to the acknowledgment of Central Planning of this requirement of 225,000 men (DS 15, ES 14/5) demonstrates also that Central Planning, and not K had to decide on the acknowledgment of this requirement. While in the entire war industry a total of 15 to 20 ^{million} workers were active: Kr.Exh.No.207, Vol.9, suppl.5 (Ritter), only 200,000 men were assigned to the sector under K's charge. This demonstrates how small K's sector was, compared with the entire war industry.

K had nothing to do with the expert opinion regarding requirements of plant workers (DS 15 below, ES 15). This matter was handled by the Reich Office Chemistry. See comments to prosecution exh.499 and 267 and Krauch-Exh.209, Vol.9, suppl.5.

Exh.No. 475, Vol.22, DS 33, ES 19.

Document shows that expert delegates of the Gobiachemie were taken from the entire chemical industry. See also DE - DRS 5146, ZFS 5122; DE - DRS 5454, ZFS 5425.

Confirms K's statement concerning his objective attitude towards the entire chemical industry and, in this connection, his reasons why since 1936 he did not ~~actually fulfill his duties at the IG~~ ^{exercise any activities in} any more. Compare TZ 63.

Exh.No.476, Vol.22, DS 34, ES 29.

Return of French labor forces who broke their contracts. See TZ 98a.

Exh. No.477, Vol.22, DS 37, ES 33.

K's letter to Kohrl of 13 January 1944. TZ 112.

Exh.No. 478, Vol.22, DS 39, ES 35.

K's lack of authority to make any decisions regarding labor forces is made very obvious through the fact that in 1944, it was deemed necessary to consider the issuing of an instruction which was intended to prevent in future the continuous withdrawal of labor forces from K's construction works by the authorities in charge of these matters, without even asking K. This instruction was intended to make necessary K's consent to a withdrawal of labor forces (DS 45, ES 40). Instruction was, however, never issued. Only a few months later 1700 men were by the fighter staff withdrawn from K's construction works, despite his protests. Pros. Exh.479, Vol.22, DS 50, ES 42.

Exh.No.479, Vol.22, DS 48, ES 41.

proves that

- a) K had no authority to make decisions regarding the allocation of labor forces to the individual construction works, that rather other offices without any ceremony and without having to ask K, were able to withdraw labor forces from the constructions under K's charge (DS 50, ES 42.)

b) that K was merely giving his expert opinion, regarding the allocation and the distribution of labor forces. He gives for instance in this case his expert opinion to the effect that the withdrawal of 1,700 concentration camp inmates from the construction works Auschwitz which was ordered by Dorsch (GB construction), would delay the completion of the constructions for a quarter of a year and would cause a production loss of 7500 tons (DS 51, ZS 42), see also DE - DPS 5213, ZS 51B4/5.

Exh. No.480, Vol.22, DS 53, ZS 44.

Proves that K was not authorized to make decisions concerning the labor forces working in the places under his charge. A special instruction by Dorsch was necessary (GB construction) in order to prevent that the fighter staff withdraw more labor forces from K's working places, without even asking K. See DS 55, ZS 45.

As a consequence of K's statement regarding the delay of the deadline Auschwitz Speer succeeded -see remarks to Exh.No.479- in obtaining that Dorsch postponed the withdrawal of the concentration camp inmates. See also DE - DPS 5212/13, ZPS 51B4.

Sending of 10,000 police men to Italy for assistance at draft (DS 57, ZS 45/6), no proposal by K, but was suggested by Italian authorities. Besides, it was a drafting of Italian army units which were to be assigned to work. Actual assistance given at army draft of an allied nation does not represent participation in slave labor program, as draft into the army does not represent the carrying out of a slave labor program. Neither can the mere intention, -which came from Dorsch, not from K,- and which was never carried out: DE - DPS 5591, ZPS 5551/2, therefore be considered participation in the slave labor program.

Exh.No.481, Vol.22, DS 58, SS 47.

This document is definite proof that wrong conclusions are drawn in case that written statements by the defendants (or even by third persons) are interpreted on their own value (see introductory remarks to part II of the CL.) -

K's statements in his affidavit regarding the Karinhall plan (DS 59, SS 47) are taken out of their context, which resulted from the eliminating of several sentences which were contained in the original statement. "This plan", which has the purpose to bring foreign workers to Germany on a voluntary basis, is not Karinhall plan, but it was K's conception to make use of the existing firms. The sentences referring to this use of the existing firms had been stricken out in the final wording of the affidavit. Allocation of foreign workers could not have been contained in the provisions of the Karinhall plan because the plan was drawn up already in 1938 and there existed at that time for the government no problem of the procuring of labor forces.

K's presence at the conference of Central Planning, in which the additional allocation of labor forces for Auschwitz was decided, is no proof of K's participation in the slave labor program. If was not a member of Central Planning, it was therefore, for this reason alone, already impossible for him to participate in the decision. Besides, there is no proof that these additional labor forces were indeed concentration camp inmates or involuntary workers.

Exh.No.482, Vol.22, DS 63, SS 50.

Affidavit Speer has no probative value, as according to Speer's own

testimony he did not know the legal basis of K's position as
Gebecken (DS 67, ES 54); DE - DPS 5144, EPS 5121.

Exh.No. 483, Vol.22, DS 75, ES 59.

No comments.

Exh.No.484/489, Vol.22, DS 76/95, ES 60/73.

Birthday gifts to Goering. They were gifts which the IG had been
requested to give by Goering's aide: DE - DPS 5164, ES 5159, DE -
DPS 5424, EPS 5393, Pros.Exh.1582, Vol.91, DS 16, ES 14.

Exh.No.490, Vol.22, DS 98, ES 75.

Affidavit Thrlimont concerning war production chiefs corps. Con-
cerns only time before 1936. after 1936 original idea regarding
position and task of the war production chief became more and more
ill-defined. War production chief became a mere title. Compare
TZ 52.

Exh.No.493, Vol.22, DS 117, ES 93.

DS 131, ES (in the English text the corresponding passage of the
original, page 14 is missing) confirms K's statement according to
which the idea of self-protection of the industrial plants against
air-attacks had already been developed since 1929 by the Reich
Association of Industry. See TZ 71.

Exh. No. 499, Vol. 24, DS 17, ES 13.

Affidavit Ehrmann confirms that the Gebecken gave his expert
opinion regarding labor requirements for the constructions in
his charge and that labor forces required for production were
allocated through expert opinion of the Reich Office Chemistry.

This is however corrected by Ehrmann's statement DPS 1714,
EPS 1729. Ehrmann's statement

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to the effect the largest part of all foreign labor forces, was allocated by K, is refuted by the fact that K handled only construction works, which employed only a relatively small part of the labor forces employed in German industry, but had nothing to do with production. THOMANN's statement that K had given preference to IG, refuted by T 2 63.

Exh. No. 500, volume 24, DS 20, ES 16.

Affidavit THOMANN. His attitude as described here demonstrates that K did not take serious the fears of the Reich Office Chemistry (Ingewitter) that war might be imminent.

Exh. No. 507, volume 24, DS 108, ES 103.

PUWATIP was not "liaison between IG and K office", but expert advisor in the field of electrolysis. Such honorary expert advisors were taken from the entire field of chemistry, not only from the IG. See comments to prosecution Exh. 475.

Exh. No. 511, volume 24, DS 3, ES 3.

Affidavit Frank-Fahle. Stated under cross-examination that the placing at disposal for the Four-Year-Plan of K. was unpleasant task for the IG and occurred only in order to prevent that a Nazi would take this position: FRANK-FAHLE DFE 1940/41, EPS 1952/3.

Exh. No. 512, volume 25, DS 10, ES 7.

Affidavit TIGNER, To DS 12, ES 9, see T 65.

Exh. No. 517, volume 26, DS 73, ES 45.

Proves that regarding the selection of a location for the two Breben works not military, but technical and commercial view-points were taken into consideration. (Food for the workers, coal, water, railway)
DS 75, ES 47.

The fact that at the construction of the works air-raid shelters should also

taken into consideration
 be ~~constructed~~ (DS 75, TS 47) is no proof of K's knowledge of Hitler's plans for a war of aggression. Reich Association of German Industry had already a year ago issued directives for air-raid protection. Prosecution exh. 172, volume 7, DS 41, ES 221.

Exh. No. 518, volume 26, DS 91, ES 59.

Proves in particular that the founding of the Brabag did not have its origin in the initiative of the 10 founders, among them the IG, but that RW had instructed the 10 founding firms to found the Brabag.

See also DF - DPS 5068, DPS 5048/9, DE - DPS 5071, DPS 5050.

Exh. No. 521, volume 26, DS 115, ES 80.

Contract IG/Brabag shows clearly that ~~instructions had been received~~ *it was effectuated upon orders*

TZ 55a.

Exh. No. 523, volume 26, DS 136, ES 94.

No comments.

Exh. No. 537, volume 27, DS 112, ES 121.

Report of a military office emphasizing the importance of the mineral oil production for the case of war. No proof of K's knowledge of Hitler's plans for aggression. Passage of the report that K had drawn up a plan for mineral oil production (DS 113, ES 122) must not be understood in the sense that K had ordered an increase in the mineral oil production.

See T7 61, 61a.

Increase in the mineral oil production suggested by the Department Planning and was obviously a consequence of an order by Hitler.

Pres. Exh. 538, volume 27, TS 119, ES 126.

Exh. No. 538, volume 27, DS 119, ES 126.

Compare concluding remarks to Exh. No. 537.

Exh. No. 546, volume 28, DS 6, ES 5.

Proves that IG was planning the increase of the bume production by taking into consideration conditions of peace time economy and foreign currency (DS 12, ES 8).

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Then Major PHILIPS and Dr. HAGEMANN as representatives of the HTA placed a greater importance on its use for rearmament (D S 12 and 15, ES 8/10) this is no proof of K's knowledge of Hitler's plans for aggression.

Exh. No. 547, volume 28, DS 27, ES 21.

Does not refute the statements by the defense concerning the buna development. See T² 57.

Exhibit No. 549, volume 28, DS 64, ES 47.

No proof in the sense of the indictment.

Exh. No. 552, volume 28, DS 133, ES 52.

Proves that even Wehrmacht officials were of the opinion that a further increase in the buna production was not required for the rearmament:

DE - OPS 5104, ESP 5064; ter Meer OPS 7047, ESP 6997.

Exh. No. 553, volume 28, DS 136, ES 94.

K's detailed statement concerning activities of the Department Research and Development. There was no question of war aims.

Exh. No. 554, volume 28, DS 149, ES 100.

Proves that increase in the buna production was caused by the motorization program of the Reich government for peace time purposes, which greatly exceeded the mobilization requirements contained in the estimate of 1935 (DS 154, ES 102).

Exh. No. 563, volume 29, DS 34, ES 11.

Ter Meer's letter to HAGEMANN of 11 October 1938 proves that increase in the buna production was also justified from viewpoints of private industry.

CLOSING WITH SIGNATURE

CERTIFICATE OF TRANSLATION

9 June 1946

I, Helene Lellendorf, NO 398036, hereby
certify that I am a duly appointed translator
for the German and English languages and that
the above is a true and correct translation of
document GEF 100-178-101.

Helene Lellendorf

NO 398036.

Exh. 578, vol. 30, IS 37, LS 33.

No comments.

Exh. No. 585, vol. 30, IS 79, LS 63.

Proves that the plan for the development of aluminum production in Norway was drawn up by Koppenberg, not by K (IS 82, LS 65) and that K. rendered advice to Koppenberg in the technical execution thereof after Koppenberg had informed him about the plan.

See also TZ 82.

Exh. No. 586, vol. 30, IS 84, LS 67.

See DS - DFS 5194, LFS 5168.

Exh. No. 588, vol. 30, IS 93, LS 74.

Confirms K's presentation that he advised Koppenberg in the technical execution (of the plan of construction work drawn up by Koppenberg ^{independently} himself). TZ 82.

Exh. No. 590, vol. 30, IS 98, LS 78.

Memorandum Seukirch concerning development work for light metal in the Four Year Plan. Seukirch's opinion expressed in DS 100, LS 80, that K had "drawn up" the production plan for army economy is refuted by TZ 61, 63a. DS 139, LS 100 shows that K had nothing to do with the planning of requirements. This was done, on the contrary, by the Rld.

Exh. 609, vol. 34, IS 126, LS 39.

Trip (DS 126/148, LS 39/55) was undertaken by order from RMA in order to check whether the terms of the Schnellplan could be kept. The same applies to reports of 25 and 3 May 1939, DS 149/161, LS 54/63. No proof of K's knowledge of intentions of aggression.

Sketch, DS 162/171, LS 64/71, was apparently written by a military expert, well acquainted

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with Dr. Ahl. as proof that K knew of this essay.

Exh. No. 834, vol. 35, DS 193, DS 111.

As proof for K's initiative to construct Dusseldorf Gas Plant.

Construction of Ethylene Plant Sodingen was provided by

EMA in the short term plan. ^(Rapid Plan) Prosecution Exh. No. 452, vol. 21,

DS 50, DS 35/36a. Ethylene and motor fuels can be produced from district gas.

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Ethylene is used in the production of plastics, lubricating oil, Glycol (anti-freeze) and mustard gas. HMA provided construction of Ethylene Plant Sodingen for the purpose of producing mustard gas in the Schnellplan. E's request to have the IG make an examination whether the installation Mont Genie at Herne-Sodingen was suitable for the production of mustard gas, was a compliance to a request from the HMA.

Ethylene Plant Sodingen was never completed and put into operation. DE - DPS 5091, DPS 5091. For this reason no D-mustard gas produced at Mont Genie.

Letter no proof that E was aware of HITLER's aggressive intentions. Exh. No. 544, vol. 36, DS 29, ES 25.

Ambros to Kuehne, 10 May 1943. Subject: rushing the production of chemical warfare agents. Copy to E during the war. Without significance.

Exh. No. 552, vol. 36, DS 87, ES 87.

General Staff of the Luftwaffe had requested additional quantities of phosphoric for the filling of bombs. HMA had provided Auschwitz as a site for a new plant and had placed a corresponding order with IG. The plant was never built.

Exh. No. 679, vol. 32, DS 1, ES 1.

E's knowledge of these agreements, part of which had nothing to do with armament (e.g. soy) whilst the other part of these was in connection with armament, does not prove anything in the sense of the prosecution. It is not denied that E was aware of the fact of re-armament.

Exh. No. 700, vol. 37, DS 1, ES 1.

Kuogler's claim that the IG liked to co-operate with the NS-State is refuted by TZ 41. In regard to the alleged passing on of plant secrets of other firms to the IG see remarks to Ankl. Exh. 450.

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Exh. No. 708, vol. 38, DS 112, ES 104.

No comments.

Exh. No. 717, vol. 39, DS 1, ES 1.

Letter written by the Department Planning, which was not under X, to the Minister of war does not contain anything in regard to aggressive intentions.

Exh. No. 718, vol. 39, DS 5, ES 3.

Memorandum "Securing the mobilization supplies by stocking up reserves" drafted in 1938 by the Department "Planning" of the RMA on request of the Wehrmacht. On account of technical and chemical questions involved in the processing of the various products the Department ^{Research} ~~Science~~ and Development was called upon to collaborate in the drafting of this memorandum.

No proof of E's knowledge of HITLER's aggressive intentions.

Exh. No. 720, vol. 39, DS 159, ES 115.

Cf. ZZ 60 Ziff. 2

Exh. No. 721, Vol. 39, DS 62, ES 33.

No evidence in the sense of the prosecution.

Exh. No. 722, vol. 39, DS 65, ES 35.

Report Kauterism on nickel supply. Proves that the War Ministry took the initiative to stock up nickel (DS 72, ES 40). No evidence in the sense of the prosecution.

Exh. No. 728, vol. 40, DS 1, ES 1.

Report Schlecht from Plant Oppau on conference in Foreign Office.
Potsdam nickel mines. Pressure on Finnish Government in March 1940.
Even if E should have learned of this

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letter, this is no proof in the sense of the prosecution.

Exh. No. 756, vol. 41, DS 23, ES 13.

Transferring the storage of products from Ludwigshafen and stocking up in certain products during the war proves nothing in the sense of the prosecution.

Exh. No. 758, vol. 39, DS 111, ES 67.

Mischke's allegation concerning K's reasons for joining the Four Year Plan are refuted by the ~~admission~~ of evidence.

Exh. No. 834, vol. 46, DS 39, ES 36.

Defection to Sudeten German Volunteer Corps in 1938. K had nothing to do with donating. DS - DS 5161, PS 5157, especially as since 1936, he is no longer officiated in the Vorstand.

Exh. No. 888, vol. 48, DS 40, ES 40.

Proves nothing in the sense of the prosecution.

Exh. No. 922, vol. 49, DS 115, ES 115.

Cf. EZ 69.

Exh. No. 960, vol. 42, DS 125, ES 136.

Contains the purely commercial considerations of IG concerning the licensing of Buna patents. No evidence as to that the IG wanted to weaken the war potential of the USA in order to prepare a German war of aggression.

Exh. No. 970, vol. 43, DS 161, ES 165.

The fact that the IG wanted to export Buna S to the USA shortly before the outbreak of war proves nothing in the sense of the accusation.

Exh. No. 980, vol. 43, DS 24, ES 27.

The fact that Dr. Ringer sent a copy of the report to K does not imply that K still handled any business as a Spartenleiter. Ringer knew of the close personal relationship

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between K and Howard and sent him a copy as a matter of courtesy.

Exh. No. 1016, vol. 43, DS ⁶⁵⁸288, ES 239.

Cf. TZ 68/69.

Exh. No. 1134, vol. 55, DS 54, ES 56.

Cf. TZ 80.

Exh. No. 1178, vol. 53, DS 44, ES 49.

Cf. TZ 81a.

Exh. No. 1186, vol. 54, DS 4, ES 4.

The false information which reached Ambros from some quarters does not prove that K was authorized to decide whether the IG could utilize the process in ^{found}Russia. Synthese-Kautschuk-Ost G.m.b.H. by the way ^{has} never been founded.

Exh. No. 1196, vol. 55, DS 96, ES 50.

K knew nothing of the intention to throttle down nitrogen production at the Werek Hydro in order to save energy for the new installations to be constructed - DE - DPS 5555, LPS 5517. Besides, such power requirements would come within the frame of article 53 HMG, even if the theory of an extended interpretation of article 53, as upheld by the prosecution, is applied.

Exh. No. 1201, vol. 55, DS 124, ES 55.

Notice Korsten: Purchase of majority holdings in the Werek Hydro.

No proof that K took part in these negotiations DE - DPS 5194, LPS 5168.

Exh. No. 1287, vol. 67, DS 9, ES 10.

Cf. TZ 100a.

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Doc. No. 1330, vol. 68, DS 121, LS 97.

Aff. K. confirms advisory capacity of K in connection with the allocation of workers. See also TZ 91.

Doc. No. 1331, vol. ⁶⁸ 68, DS 126, LS 101.

No comments.

Doc. No. 1332, vol. 68, DS 127, LS 102.

Aff. K shows concern shown by K for workers.

See U. - DPS 5447/48, LPS 5413/4.

Doc. 1360, vol. 69, DS 163, LS 130.

Aff. Simon shows that volunteer workers were hired in Italy.

The directives to report workers who had broken their contract to the Gestapo did not come from K, but from ORA. See TZ 98a. It is therefore no evidence in the sense of the indictment.

Doc. No. 1371, vol. 70, DS 34, LS 21.

See U. - DPS 5238, LPS 5209.

Doc. No. ¹³⁷⁶ 1387, vol. 70, DS 120, LS 63.

Of. 22 105.

Doc. No. 1387, vol. 70, DS 168, LS 102.

From the use of the word "recruiting drive" ("Werbesaktion") alone it becomes evident that this drive handled by K was to secure volunteer workers. Insofar as persons were on the transports who had been inducted into labor service, the enlistment papers, which otherwise were only intended for volunteer workers and which contained their personal data, were marked by a special number for identification.

Doc. No. 1392, vol. 70, DS 190, LS 120.

The mentioned "K"stoffe are not chemical warfare agents (Kriegsstoffe).

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as claimed by the prosecution, DPs 3341 - 4PS 1313/4, but
plastics (Kunststoffe).

Exh. No. 1393, vol. 70, DS 239, LS 129.

Tel type Leverkusen addressed to RMA for the reason that the
Gebäckerei had no own teletype office. Contents of the teletype
is only to the effect that Gebäckerei should support the requests
of labor for Leverkusen. No evidence in the case of the
prosecution.

Exh. No. 1408, vol. 72, DS 1, LS 1.

Exh. No. 1413, vol. 72, DS 40, LS 23.

See III - DPs 5255, 5228; cf. Ambros Exh. No. 220,
DPS 14397, 14074.

Exh. No. 1414, vol. 72, DS 47, LS 27.

Cf. TZ 107a.

Exh. No. 1416, vol. 72, DS 53, LS 35.

Aff. Ambros. The claim that K had ordered the IG to construct
a Buna plant and to look for a site is refuted by Prosecution
Exh. 1408, vol. 72, DS 1, LS 1, and Prosecution Exh. 1413,
vol. 72, DS 40, LS 23.

Likewise, the statement that the existence of the Ks had a decisive
bearing on the selection of the site is refuted by TZ 106. In
regard to ordering the utilization of Ks prisoners at Auschwitz
see TZ 107.

Exh. No. 1417, vol. 72, DS 56, LS 39.

Goering decree of 18 February 1941. See TZ 107.

Exh. No. 1419, vol. 72, DS 80, LS 47.

Aff. Ambros. The order to select a site for Buna plant was not
given through K, but through RMA: Prosecution Exh. 1413, vol. 72,
DS 40, LS 23. In regard to K's visit at Auschwitz see TZ 115.

Dok. No. 1420, vol. 72, IS 106, IS 53.

TE 106/7 and Ld - DPS 5419, 5259, PS 5389/⁹⁰~~50~~, 5233.

Dok. No. 1422, vol. 72, IS 113, IS 71.

Letter Nirth to embryo. See TE 107.

Dok. No. 1423, vol. 72, IS 115, IS 73.

No comments.

Dok. No. 1473, vol. 73, IS 185, IS 99.

Armament Ministry had given orders to give priority to the development of gasoline production (Benzol) over the development of Buna production (Auscho-itz). K. communicated this order to IG . Closing sentence of the letter (IS 185, IS 100) referred to having K draw the attention of the Armament Ministry to the fact that the term of completion for Buna-auschoitz would be considerably delayed by the removal of the 1300 man.

Dok. No. 1500, vol. 77, IS 28, IS 13.

DE - DPS 5259, LPS 5233.

Dok. No. 1507, vol. 77, IS 110, IS 54.

Nothing special that K as Vobachan was called to a session of the Central Planning where the reconstruction of the bombed Buna plant and the development of Buna production at auschoitz were discussed.

Dok. No. 1513, vol. 77, IS 1-2, IS 85.

See TE 108.

Dok. No. 1526, vol. 79, IS 60, IS 53.

Letter K to EI .L.H. Subject: Ldk - Sagra. See TE 111.

Dok. No. 1535, vol. 64, IS 24, IS 25.

Memorandum on general meeting of the Continental Cel A.G. shows that K. was only one

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of the 25 members in the Aufsichtsrat of the Kontinentale Göl AG.

Exh. No. 1582, vol. 91, DS 18, ES 14.

Aff. Wolff confirms K's statement according to which Goering exhorted industrialists to give him birthday presents.

Exh. No. 1839,

See GS - DKS 5489, DKS 5437.

Exh. No. 1840/1843.

See TZ 84.

Exh. No. 1845.

TZ 102, 109.

Exh. No. 1846.

TZ 114.

Exh. No. 1847.

Does not prove that K. participated in the slave program.

GS - DKS 5584/5, DKS 5544/5.

Exh. No. 1982 (submitted during the cross-examination Zastorfiach)

Explanation to this Exh.No. 196, vol. 9, page 111.

Exh. No. 2199, Rebuttal-Book 93, DS 1, ES 1.

Typical example of the strong production pressure and production requests. Shows in addition that K was not authorized to allocate workers or to employ them, or to decide on priority gradings for the allocation, for it says that the Reichamarschall had instructed the offices in question to see to it that the necessary measures were taken.

Exh. No. 2201, Rebuttal-Book 93, DS 8, ES 8.

The claim that the Reich Office for Economy Expansion⁽¹⁴⁴⁾ had given orders to the IG to

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erect another plant for the production of Guns in Upper Silesia is incorrect. The correct facts of the case - order from RHM and/or the GKN - are shown by Prosecution Exhibit No. 1408, vol. 72, DS 1, LS 1, and Prosecution Exhibit No. 1413, vol. 72, DS 40, LS 23, Ambros Exh. No. 220, of. DS 14397.

Doc. No. 2322

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List of Abbreviations !

Aff.	means	Affidavit
Ankl.	"	Prosecution
Ankl.Exh.	"	Prosecution Exhibit
Bd.	"	Volume
Brabag	"	Braunkohle-Benzin A.G.
baw,	"	and/or
CE	"	Cross examination Krauch
CL	"	closing brief
DE	"	direct examination Krauch
DPS	"	German transcript page
DS	"	German page
ES	"	English page
EPS	"	English transcript page
Exh.	"	Exhibit
GHA	"	Plenipotentiary-General for Labor Allocation
Gebeches	"	Plenipotentiary General for Special Questions of the Chemical Production
HLKO	"	Hague Convention Rules pertaining to Warfare on Land
H/A	"	Army Armament Office
K.	"	Krauch
Kr.Exh.	"	Krauch-Exhibit
Kz	"	Concentration Camp
OKW	"	Supreme Command of the Wehrmacht
P u. S	"	Powder and Explosives
PSV	"	Powder, Explosives, Primary Products
RAM	"	Reich Ministry of Labor
RLM	"	Reich Ministry of Aviation

Closing Brief KRAUCH

Rue-Min.	means	Armament Ministry
REA	"	Reich Office for Economic Expansion
RM	"	Reich Ministry of Economy
S	"	page
SD	"	Security Service
Stalag	"	PN Camp
suppl.	"	supplementary volume; supplement
TB	"	Trial Brief of the Prosecution
TEA	"	Technical Committee of IG
TZ	"	Text number (reference to the numbers on the left margin of each page of the first part of the closing brief.
Vergl.	"	cf.
V/W	"	Vermittlungsstelle
Ziff.	"	Number

- - - - -

Closing Brief BRADCH

CERTIFICATE OF TRANSLATION

8 June 1948

I, Leon R. FORDMAN, Civ. No. 10 483, hereby certify that I am
a duly appointed translator for the German and English languages
and that the above is a true and correct translation of the
original document.

Leon R. FORDMAN
Civ. No. 10 483.

CLOSMET BRIEF, KUSHNE
(BENEFIT)

Case 6
Defense

Tribunal IV

Case 6

CLOSING BRIEF

For

Dr. Hans KUEHNE

Submitted by
Dr. Herbert NATH
Attorney-at-law
Defense Counsel.

ring



INTRODUCTION.

It is the purpose of this Closing Brief, to provide this Honorable Tribunal with a survey of the subject matter of this trial as far as it concerns my defendant, Dr. Hans KUEHNE. I have endeavored to render the argumentation as complete as possible, limiting myself, however, to the person of my defendant. I am therefore referring to the presentation of evidence and argumentation presented by my colleagues, in as much as they undertook to deal with special subjects, such as e.g. Herr von METZLER, attorney-at-law, who dealt with the legal foundations regarding count I of the indictment and the responsibility of the Vorstand. I am further referring to Prof. Dr. WAHL's treatment of the subject of "conspiracy". Some aspects of the evidence presented have been further/dealt with in detail by my colleagues in their closing-briefs. I have made brief comments only in as far as they touch upon Dr. KUEHNE's defense structure, in order to avoid repetition.

For the rest I am referring to the detailed examination of my defendant in the witness stand, which constitutes a comprehensive answer to the counts of the indictment.

CLOSING BRIEF KUEHNE

Ad Personam Dr. KUEHNE

His position within the I. G.

Prosecution Evidence: Pros. Exh. 391 (NI-9487) Doc. Book 15,
English page 6-124, German page 71-112

Counter-Evidence : Kuehne Doc. and Exh. 7, par. 2 p. 21/22
Kuehne Doc. and Exh. 8, par. 2 p. 23
Kuehne Doc. and Exh. 9, par. 2 p. 24/25
Kuehne Doc. and Exh. 41, par. p. 91

all contained in Doc. Book 1,

KUEHNE-examination, of 25 March,
English transcript page 10082.
German transcript page 10221,

Prosecution Exhibit 303 (NI-5129) Doc. Book 15
English page 118/120, German page 139
Affidavit Strass,

Prosecution Exh. 338 (NI-6120) Doc. Book 12,
English page 181, German page 163, Affidavit
KRAUCH concerning KUEHNE's resignation and
Dr. H. BERGLAND's appointment as his successor.

On 1 January 1923, Dr. KUEHNE became a deputy member and on 1
January 1926 he became a full member of the Vorstand of the I.G.
Farbenindustrie A.G. He was a member of the Technical Committee (Tos)
and of the Chemicals Committee (Chem). On 1 January 1933, he became
the head of the Leverkusen plant and of the Works Combine Niederrhein,
which comprised the plants Leverkusen, Elberfeld, Dornagen and
Uerdingen.

His functions as head of the Works Combine were defined through the
principle ^{of} de-centralization, prevailing at Farben, according to which
each plant leader was given the greatest possible amount of independence
of action in his plant, and at the same time rendering him responsible
for the plant. It followed further from the historical development, that
most

plants, - formerly independent firms, - had retained their individual existence, even after they had been fused into a large combine of firms. Thus the parent plant of the firm of Friedrich Bayer in Elberfeld retained its individual character and pronounced independence. There at Elberfeld, research into and the production of pharmaceutical products was developed, after the other branches of production had moved from Elberfeld to Leverkusen. A plant with traditions of its own such as Elberfeld, and headed by a man like Prof. HOERLEIN, who was at the same time member of the central committee, fitted only loosely into the community of the "Works Combine Niederrhein" and did not allow the head of the Works Combine the right to interfere in the plant management. The Uerdingen plant had, if that were possible, even greater leanings towards independence. Up to the time of its absorption into Farben, the Uerdingen plant had been an independent firm "Waller - ter Meer", which had been founded by the father of the defendant Dr. Fritz ter Meer. Uerdingen had no connection with Leverkusen and showed no inclinations what - ever to subordinate itself to the head of the Leverkusen plant or to allow him to interfere in its management. On page No. 87 of the English version, of the above mentioned Prosecution document (Proc. Exh. 391) the witness Struss states the following:

"Corresponding to HOERLEIN's position, who was a member of the Central Committee even at the beginning of 1933, his position at Elberfeld was very independent. He (Hoerlein) never permitted any interference in the internal conditions of the plant.

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Also on page 88 of the English version:

"The independence of the Herdingen plant was also very extensive. Attempts on the part of Leverkusen to get a hold on the internal administration were failures."

The law concerning National Labor Regulations, issued on 23 April 1934, supported these leanings towards independence in the individual plants, by installing a Plant Leader (Betriebsfuhrer) in each plant carrying full responsibility for personnel management, the allocation of labor and social welfare. Dr. KUEHNE became the Plant Leader of the Leverkusen plant, thus becoming responsible for it in the same way as his colleagues who were appointed Plant Leaders at other plants of the Works Combine, were responsible for their plants. This, however, precluded that Dr. KUEHNE had any authority of control over the other plants of the Works Combine and Dr. KUEHNE does not have any criminal responsibility for the "Works Combine Niederrhein" regarding the Prosecution charges made in this trial. The Prosecution has failed to produce evidence, to the effect that my defendant made himself guilty of neglecting obligations that arose for him out of this position as head of the "Works Combine".

On 31 July 1943, Dr. KUEHNE resigned from his position as Plant Leader of Leverkusen and Dr. R. ENLARD became his successor. This fact was publicized in the plant on 1 August 1943 by public notice, through the Farben circular dated 4 August 1943 and through a notice in the August/Sept. issue of the Farben plant newspaper, (Kuehne-Doc. and Exh. 7, par. 2, 8, 9, page 21 to 25, Doc. Book 1).

himself guilty of neglecting obligations that arose for him out of this position as head of the "Works Combine".

On 31 July 1943, Dr. KUSHNE resigned from his position as Plant Leader of Leverkusen and Dr. H. HEDDING became his successor. This fact was publicized in the plant on 1 August 1943 by public notice, through the Farben circular dated 4 August 1943 and through a notice in the August/Sept. issue of the Farben plant newspaper, (Kushne-Doc. and Exh. 7, par. 2, 8, 9, page 21 to 25, Doc. Book 1).

CLOSING BRIEF KUEHNE

According to the Labor Draft Law in force in Germany, Dr. KUEHNE would not have been permitted to resign from his position in war-time before his 65th year of age, i.e. not before 3 June 1945; he stated this during his examination (English transcr. page 10082, German transcript page 10221). His constant dissatisfaction with the lack of freedom under the Nazi regime and his unspoken opposition to the measures of government and Party with which he often was obliged to comply owing to his position as Plant Leader, led him to the decision to retire, in order to escape from this situation which was getting more and more unbearable. Since in July 1943 he was again suffering from an attack of his old illness, - arthritis deformans - he used this illness as a pretence to justify his resignation.

Evidence: Kuehne Doc. and Exhibit No. 7, page 21, Doc. Book 1. Formally Kuehne still remained the head of the "Works Combine Niederrhein", since otherwise he would have run the risk of being directed by force into an armaments plant as a chemist if during the war and being less than 65 years of age, he had not been able to prove that he was doing some work.

This fact is borne out by

Prosecution Exh. 303 (NI-5129 Doc. Book 15, English page 118/120; German page 139, Affidavit Strauss and

Prosecution Exh. 338 (NI-6120) Doc. Book 12, English page 151, German page 163, Affidavit Krouch concerning Dr. KUEHNE's resignation and Dr. HUBERLAND's appointment as his successor.

In fact, Dr. KUEHNE has been living at Lindau, on the Bodensee since 1 August 1943, and only came to Leverkusen very rarely, the last time on 27 October 1944.

Evidence: KUEHNE Doc. and Exhibit 41, Doc. Book 1, page 91.

It has to be stated therefore that Dr. KUEHNE can only be held responsible for the Leverkusen plant up to 31 July 1943, since he ceased to be Plant Leader from that date on.

To Count I of the Indictment.

Prosecution Charge: Alliance with Hitler and the Nazi Party

Prosecution Evidence: Pros. Exhibit No. 1619 (NI-6711) Doc. Book 66, English page 23, German page 23.

Counter-Evidence: Examination Kuehne, English trans. page 10103
German trans. page 10239 ff.

The document Pros. Exhibit 1619 shows that Dr. KUEHNE joined the NSDAP in 1933, was excluded from the Party again in 1934 and only in July 1939 was re-installed as a member. In this connection he said in the witness stand (Engl. Transc. Page 10103) that being a Lodge member he was expelled from the Party in autumn 1933 and only accepted for membership in 1939 upon Hitler's so-called general amnesty decree.

Prosecution charges: Trial Brief, part I, page 83:

"In the sphere of politics, Farben as we have seen, gave their unrestricted and energetic support to Hitler and the Nazi Party.....
In April 1933,

the defendant KUEHNE appealed to the entire staff, to attend the May celebration pointing out that it was most important for Germany to stand behind its government on this day above all."

Prosecution evidence: Pros. Exh. 82 (NI-6960) Doc. Book 4,
English page 79, German page 104

Counter evidence: KUEHNE examination, English transcr. page
10108/9.

At his direct examination Dr. KUEHNE pointed out on 25 March 1943(?) (English transcr. page 10109), that the appeal to the employees was made upon the request of the government, that the National Socialist Party was not mentioned with one word in this appeal and that finally, on 1 May 1933, there was a coalition government in power, consisting of 12-15 ministers, only 4 of whom were Nazis. This fact had been overlooked by the Prosecution. It was therefore completely mistaken to construe "an all-out support for the Nazi Party" out of that appeal to celebrate the 1 May. The 1 May was, apart from that, a day being celebrated by the workers of many countries all over the world. In the opinion of the Defense, a Plant Leader must be considered to be acting quite within his rights in appealing on that day to the workers to support the government of their country.

Prosecution charges: Trial Brief, Part I, page 83:

"In May a circular was addressed to all Farben plants stating that the management would welcome it, if the National Socialist cells in the plants were suitably represented."

Prosecution evidence: Prosecution Exhibit 83 (NI-1091) Doc. Book 4,
English transcript page 80
German transcript page 105

Counter-evidence: KUEHNE, Doc. and Exhibit No. 13-26, all in
Doc. Book 1, page 31-59
KUEHNE examination dated 25 March 1948.
English transe. page 10109/10.

It is not evident in any way from the above named Prosecution Exhibit 83 that that letter, was - as alleged by the prosecution - a circular to all Farben-plants. As may be seen from the address, this letter was addressed to a certain Dr. W. H. L. at Leverkusen. Since the document does not carry any signature there is no proof of this letter having been dispatched at all. The document can therefore at most be credited with the value of a draft which characterizes its probative value. Apart from this, the Prosecution endows the document with an importance it does not deserve. Dr. KUEHNE wanted to prevent, rabid Party members from attaining to leading positions in the works council. Since Dr. W. H. L. was known as a Party member and at the same time as a reasonable and objective - minded man, he was called upon in order to gain his mitigating and reasonable influence. The witness Joerns confirms that as in his affidavit (Kuehne Doc. and Exhibit 15, last par. page 37, Doc. Book 1) quoted above in the following manner:

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"With the help of Dr. WAHL, Herr Dr. KUERNER intended to restrain radically minded members of the Party in the leadership of the IGBO and of the Workers' Council at the Leverkusen works of the I.G. Farben. In their place he wanted "suitable" i.e. moderate men with professional qualifications in order to replace unsuitable men in the office of functionaries. Obviously, this letter or drafted letter was written on 19 May 1933 with this intention. The real meaning of such endeavors of Herr Dr. KUERNER, therefore was the very opposite of abetting Party propaganda."

never

Dr. KUERNER has made any active efforts on behalf of the Party.

In his circles he was known for his critical and negative attitude towards National Socialism. He even did not shrink from criticising Party ordinances and to contravene them. That was ^{this} Dr. KUERNER's attitude towards the Party and National Socialism is being confirmed by a large number of affidavits. I refer to Kuerner Doc. and Exhibit 13,

14, 15, 60, 26, all in Doc. Book 1,
pages 31-59.

The fact that Dr. KUERNER was a Democrat who abhorred any kind of coercion, is evident from all testimonies about him. Thus he condemned the Nazi policy towards the Jews not only, because he himself had ties of close friendship with a number of Jews, but he was indignant about the mental attitude underlying the measures which were put into force against the Jews. Whenever he could, he assisted Jewish friends. He even continued to give such help, after having received clear warning from the Gestapo through the Plant Intelligence Officer, and at a time when his correspondence was being watched by the Gestapo. Dr. KUERNER continued right up to and during the war, to assist persons persecuted for racial and political reasons, offering them shelter and the possibility to earn their living.

Dr. KUEHNE's knowledge of and participation in HITLER's planning
and preparations for aggressive war.

Prosecution charge: "All Defendants participated through Farben
in the plan, preparation, launching and
conduct of the aggressive war.....
over a period of years prior to 8 May
1945....."

also: Farben participated in the weakening of
Germany's potential enemies."

Counter evidence: Examination Kuehne, dated 30 March 1948
English transcr. page 10124 - 35,
German transcr. page 10259-73.

Examination ter Meer,
English transcr. page 7126;
German transcr. page 7179.

Examination Pritsche,
English transcr. page 13381.

Kuehne Doc. and Exh. 1 and 2,
Doc. Book 1, page 1-11,
Kuehne Doc. and Exh. 38-45, Doc. Bk. 1, page 83-100,
Kuehne Doc. and Exh. 46-48, Doc. Bk. 2, page 101-105.

In the course of the proceedings, witnesses and defendants have
on various occasions answered in detail to the Prosecution charges
that the Vorstand of Farben planned and prepared for aggressive
war in conjunction with Hitler. Like the majority of the German
people - the members of the Vorstand - which included Dr. Kuehne -
believed in Hitler's official statements, which repeated again
and again throughout the years, that he desired peace and did not
want war (examination of the witness Pritsche). As Dr. ter Meer
explained during his examination (English transcr. page 7126 ff)
Farben was not interested in a war to the slightest degree.
It had already lost more than 50 % of its world trade during the
First World War.

CLOSING BRIEF KUSHNE

and during the subsequent years had made enormous efforts in order to regain that position. Its leading men were of course aware of the fact, that a new war could bring nothing but awkward interruptions and painful losses for Farben.

Dr. KUSHNE himself, a convinced anti-militarist and Pacifist, has always been acting from the conviction that only a supra-national exchange of ideas could be of advantage to research and industry and that wars always mean a regress and therefore are to be condemned. Dr. KUSHNE sought to establish contact with scientists abroad and showed his work to foreign visitors in the most generous way. In 1936 for example, a group of American chemists and engineers visited the Leverkusen plant. In a report in the periodical "Chemical and Metallurgical Engineering" Mr. KIRKPATRICK writes as follows: (Kushne Doc. and Exh. 42):

"There at Leverkusen we were met and welcomed by Dr. H. KUSHNE, member of the Vorstand of I.G. Farbenindustrie Aktiengesellschaft....."

He said in part:

If you as the representatives of the chemical industry and science of your country have come here to get better acquainted with our plant, we on our part would like to express the hope that such an acquaintance should, at the same time, be a personal approach and that new friendly relations might be created between us. Two such countries as America and Germany who have the most modern and most efficient chemical industries of the world, must in my opinion, never again renounce the mutual exchange of thought and ideas but should always find again and again in such an exchange valuable suggestions and a constant enrichment of the soil of science..... Finally we were asked if there was anything else that we could like to see and someone (perhaps it was a distinguished

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Perkin medalist from Akron) suggested that it would be interesting to see the production of the new synthetic rubber "Buna" provided there was no objection on the part of the management. Dr. KUEHNE quickly arranged a trip to the new plant, where we were shown the final steps in the process."

Up to the beginning of the war, foreign firms were granted licenses to use technical processes from Leverkusen ; the plant even lent installations abroad. (Kuehne Doc. 43-45) .

It can be seen from the Kuehne Documents 44-45 that in 1939 Leverkusen arranged the setting up of a sulphuric acid plant in England as well as in France. This fact refutes beyond any doubt that Farben participated in the weakening of the potential of Germany's enemies, as claimed by the prosecution.

As mentioned before, Dr. Kuehne was not only motivated in his actions by the conviction held by every member of the Vorstand, that a war would be disastrous for Farben. An important component in his actions and belief was patterned by his pacifist outlook. Up to the last, he did not think Hitler could be as mad as to provoke a war. At the end of August 1939, he was still ready to let his son travel to Africa being convinced there would be no war. (Kuehne Doc. 39). When he learned of the outbreak of war, he was indignant and dejected . The witness Dr. Klebert (Kuehne Doc. 40) reports that he found Dr. Kuehne deeply shaken.

CLOSING BRIEF KUEHNE

after the outbreak of war had been announced on 1 September 1939.

Upon his question, Dr. KUEHNE replied to him about as follows:

"I took part in one war and I know the horrible accompanying phenomena and consequences of war. This war will not be confined to Poland, but it is the first start and is going to release the avalanche of a world war. Whether we win or lose the war, the material sacrifices which all nations must make will be in no proportion to the possible gains. The moral brutalization and estrangement of the nations among each other will be still worse than the material sacrifices and it will take a very long time until the spiritual and mental hardships provoked by the war will be overcome."

The witness Josef SCHULTZ (Kuehne Doc. and Exh. 41) expressed himself in a similar manner, he reported that in conversation with him Dr. Kuehne described the war which had just broken out "as a crime which the German leadership could only have provoked out of their complete ignorance of the actual conditions abroad."

Prosecution charge: Trial Brief, Part I, para 98:

"On 22 September 1938, the defendants Gajewski, HOSKUPN.... Kuehne... were informed that after discussing the matter with Schmitz, the Central Committee had decided to subscribe 100,000.— RM to the German German Free Corps....."

Prosecution evidence: Pres. Exh. 834 (NI-318) Doc. Book 46, English p. 36
Pres. Exh. 1047 (NI-4710) Doc. Book 51, English page 126/27

Closing Brief KUEHN

Counter-Evidence: Pres.Edh.834 (HI-1318) Doc.Book 46,
English page 36-38, German p.24

The above document reads as follows:

"To beg to inform you that after having talked over the matter with Geheimrat SCHITZ, we have placed the amount of RM 100,000.- at the disposal of the Sudeten German Free Corps, for the whole of Farbon centrally."

This goes to show that the Vorstand members who are defendants here including KUEHN, were only informed of this donation through that letter, i.e. after it had been subscribed.

In the same manner, Dr.KUEHN learnt of other donations only after they had been given, as in the case of the donation of more than 400,000.- RM for election purposes in 1933 (compare Dr.KUEHN's examination, English tranac. p.10120, German tranac. p.10257). Of the donation of more than 50,000.- RM to General CHRISTIANSEN (Pres.Edh.1047, HI-4710, Doc.Book 51, English p.125/27,) Dr.KUEHN learnt for the first time only during the trial. Where the decision rested with him, i.e. at his Leverkusen plant, KUEHN manifested an embarrassingly cool attitude regarding donations to the Party. I refer to:

KUEHN, Doc. and Edh. 36, Doc.Book 1, page 79/80.

According to the list of donations for the time from 1933-45 contained in that document; it can be seen that the plants of Leverkusen, Silberfeld and Dormagen, belonging to the "Vorka Combine Niederrhein" contributed an annual average of 3076 .-RM. each to the Party and its affiliated formations. In view of the Leverkusen staff numbering more than 15,000, that

appears a more than modest amount.

During the same period, i.e. after 1933, Dr. KUEHN put an amount of 30. - 40,000 RM at the disposal of the management of the Koelnische Zeitung, which was exposed to strong political pressure from the Party, for having declined a fusion with a Party organ. (KUEHN, Doc. and Exh. 25, Doc. Book 1, page 56-57), in order to support it in its fight for its independence from the NSDAP.

Prosecution Charge: Trial Brief, part I, page 106:

There, it is claimed by the Prosecution that Farben reaped increasing rewards from the Nazi government, not only for the firm as such, but also for its leading men.

Counter Evidence: Direct examination KUEHN, English transo. p. 10150.

The gross earnings of the members of the Farben Vorstand remained the same between 1938 and 1945, actually, however, their net earnings were greatly reduced owing to the enormous increase in taxation. Compared to other German enterprises, but above all by comparison to the salaries paid by large American firms, the earnings of the Farben Vorstand members were small. KUEHN showed that during examination by comparing his income with that of a managing director of General Motors.

Closing Brief KUEHSE

During this trial we have not heard anything about KUEHSE's receiving rewards by the Nazi government. We are dealing here with an empty claim by the Prosecution, which is aimed at discrediting the defendants, and which has not been substantiated in any way.

During cross-examination, Dr. KUEHSE was confronted with the statement that the Leverkusen plant had been praised by the German Labor Front, (Pros. Ex. 2065 (NI-7245) English Transcript page 10237, German transcr. page 10371). Dr. KUEHSE testifies in this connection that the Labor Front alternatively praised and reproved him. The document introduced by the Prosecution, in which erroneous mention is made of a "Gaulleiter" called NOSSFELD, who in reality was the "Gaustaleiter of the KDF" (Strength through Joy) fully confirms that statement by KUEHSE.

Prosecution Evidence: Pros. Ex. 2066 (NI-15026), consisting of a letter of the defendant KUEHSE to General SCHEITZ dated 15 May 1942 concerning his visit to Mussolini in March 1942.

During cross-examination the defendant stated (English transcr. page 10942) that this visit had occurred upon Mussolini's initiative.

Closing Brief EUEBNE

Dr. EUEBNE had suggested a new procedure which would double the sulphur production in Sicily, at the same time eliminating the harmful effects upon agriculture which manifest themselves at present. Mussolini was interested in that proposal and wished to discuss it with Dr. EUEBNE and to receive information by him.

Collaboration with the Wehrmacht.

Prosecution Charge: Trial Brief, part I, page 15:

"From 1933 to 1939 Farben collaborated closely with the Wehrmacht building up Germany's military might. The evidence under this subdivision shows the creation of a military liaison office in Farben to expedite dealings with the Wehrmacht, the preparation of mobilization plans and other related activities.

This office played an important role in all of Farben's preparations for mobilization, such as air raid precautions, mob plans for production, war delivery contracts, military map exercises (war games), secret military patents, stock piling, ect."

a) Secrecy directives.

Prosecution Evidence: Pros. Ech. 146 (NI-14678), D.B. 6,

English page 52, German page 86.

" " 150 (NI-1146), D.B. 6,

English page 64, German page 104.

" " 618 (NI-8980) D.B. 35,

English page 6, German page 11.

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Counter Evidence: KUEHNE-Doc. and Exh. 54-56, Doc.Book 2 pages 117-123.

The first Prosecution Exhibit consists of a "Directive to maintain secrecy concerning the "Liaison Office W" just being organized", which had to be signed by KUEHNE and two other gentlemen from the Leverkusen plant. As is explained in the document itself, it deals with the establishment of a liaison office to governmental agencies, which also included military agencies. In view of Farben's size of course, it had business contact with governmental agencies; this is completely unavoidable in business life and even necessary; Consequently the "Liaison Office W" was set up in order to serve as a central agency for technical questions, thus avoiding extra work and overlapping.

Doc.Exh.150 is a circular issued by Dr.KUEHNE, dated 21 Feb 1936, in which he had to pass on certain security regulations. It contains references to regulations concerning intelligence in the case of foreigners being employed in a plant. The letter mentions specifically that these regulations "did not generally apply to Farben, but had to be observed according to their spirit."

This refers to directives for the observance of secrecy and the use of precautions against espionage, as in every existing country which has any armed forces. Even Switzerland has such regulations. In the USA, Ct. Britain and Canada

the very severest secrecy regulations are usually enforced today, particularly with regard to the atom-bomb, although nobody is going to insinuate that Crimes against Peace are intended thereby. No citizen of any country can refuse such demands on the part of his government. But by no means can any conclusions be drawn from it, concerning plans for a War of Aggression and even less for a Conspiracy against Peace.

Dr. KUEHNLE objected when official agencies approached his colleagues pledging them to secrecy without his knowledge and approval. In this way he learned one day that without his knowledge one of his chemists, Dr. HOLCK had been given a task concerning a subject which was to be kept secret. Thereupon Dr. KUEHNLE issued a strict prohibition forbidding the acceptance of such obligations and repeated that prohibition, before the assembled Plant Leaders of the Leverkusen plant, numbering more than 200. I am herewith referring to

KUEHNLE - Doc. and Exh. 54-56, Doc. Book 2, pages 117-123.

Apart from that, the order regarding the subject of D-Iso, mentioned in KUEHNLE Doc. 56, merely refers to a small experimental installation, the only work in the sphere of chemical warfare agents, which was done at Leverkusen. A manufacturing plant was not installed at Leverkusen.

In Pros. Exh. 618 (NI-9900) Doc. Book 35, English page 6, German p. 11) it is stated that the development for a process of manufacturing

Closing Brief KUEHSE

Nitrogen-Lost was started at Leverkusen around 1935.

In that connection, Dr. KUEHSE explained during his examination of 30 March (English transcript p.10143) that there was an error here, the work having been executed at Ludwigshafen, not at Leverkusen. This is also confirmed by the witness Gross in the Document HOERLEIN 64/2, Ed. 33, Doc. Book HOERLEIN II, page 29.

b. Security Service.

Prosecution Evidence: Pros. Ed. 1019 (NI-10785) Doc. Book 43,
English page 232, German p. 283.

Counter Evidence: KUEHSE Doc. and Ed. 51 and 52, Doc. Book 2, pages 112-115.

According to the above Prosecution document, the American Public Prosecutor Biddle testified in 1944, before a Senate Sub-Committee that German chemical plants tried to prevent American firms from employing German scientists as early as 1921. When the firm of Dupont made such an attempt, the German scientists were at first arrested and imprisoned. This refers to a case which occurred at Leverkusen.

In this connection, the Defense witness Jean HERBEEK (KUEHSE Doc. 51) stated that chemists and engineers of the Leverkusen plant had through illegal means - namely by breaking into filing cabinets - gained possession of other people's ideas - namely documents concerning chemical processes and construction plans -, in order to take them along to the USA, where

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they wanted to find suitable positions for themselves. Because of that theft they were, of course, arrested. The Captain of the Dutch boat, on which they made the crossing arrested them upon request of the German authorities, transmitted by short wave message. In New York, however, the American police took them off the Dutch boat by force and set them on land. The American Public Prosecutor BIDDLE, however, must have been the victim of a gross deception when making the statement quoted in Dec. Edh. 1019 before the Senate-Sub Committee. The Prosecution would have done better not to dig up this event of the year 1921. Firstly, it is legally entirely immaterial for the outcome of this trial what did or did not happen in 1920. Secondly, it is only to be expected that chemists and engineers, who committed a theft, should be prosecuted and arrested; only the strange conduct of the American police in that matter still appears quite unclarified. If this document is to be credited with any probative value whatever, it only serves to show, with what inadequate means the Prosecution attempts to prove its case.

This incident caused Farben to set up its own Security Service, which was to counteract industrial espionage and thefts. That Security Service had no connection with any state institution, such as e.g. the Gestapo or the SD which were established after 1933.

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The head of the Security Service of the Leverkusen plant did not belong to any Nazi organization.

Evidence: KUEHNE Doc. and Exh. 52, Doc. Book 2, page 114/115.

c) Leader of War Industry. (Mehrwirtschaftsfuehrer)

Prosecution Evidence: Pros. Exh. 491, (NI-4623) Doc. Book 22, English page 14-15, German p. 20

Counter Evidence: 1. KUEHNE-Doc. and Exh. 53, Doc. Book 2, page 116

2. KUEHNE-examination, 30 March 1948. Engl. transcript. 10139 German transcript. p. 10278/79.

By means of this letter from a military agency to Dr. FLINZER, a chemist at Leverkusen, the Prosecution obviously wants to prove the existence of a connection between Dr. KUEHNE and the Wehrmacht and his knowledge of the preparations for war.

According to that letter, Dr. FLINZER, who was a simple chemist among hundreds of others at the plant, and had no connection to the plant management, in his capacity as officer in the reserve corps, was suggested for the assignment as Leader of War Industry. Neither the plant management, far less Dr. KUEHNE had any connection with that. Apart from that, Dr. FLINZER never got the designation of Leader of War Industry.

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d) Planspiel.

Prosecution Charge: Trial Brief, part I, page 17, par.2:

"In March 1936, the defendants started to conduct map exercises" or "war games" at the most important Farben plants in order to test how these plants could be protected against bombing in case of war and these map exercises were held in the presence of the then Colonel THOMAS, Chief of the Military Economic Staff, and other high officers (Exh.102, MI-8321, book 5, page 82, Exh.29, MO-8637, book 3, page 18; Exh.103, MI-4619, book 3, page 86; see exhibits 183 through 190 in book 7)."

Trial Brief part I, page 92:

"In January the defendant carried out so-called "tactical exercises" or "war games" at his plant at Leverkusen."

Prosecution speech, English transcript p.164, German transcr. p.443:

"I believe that it(Planspiel)is often called a "Kriegsspiel", i.e. "war game". "Planspiel" might be an exercise on the map, or simply a game. But we think that according to the way, these exercises were carried out on a map, Plan Spiel may without question be translated as "war game".

Counter Evidence: 1. KUEHSE -Doc. and Exh.49, Doc.Book 2, page 107.

2. KUEHSE-examination, English transcr.10135/36,

German transcr.10273/74.

In the above quoted documents "map reading exercises, war games or tactical exercises" are not mentioned with one single word (tactical exercises in Exh.186). In view of the fact that the Prosecution staff has such a good command of German, it must be considered as

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an attempt to mislead the Honorable Tribunal, if "Planspiel" - is referred to as "map reading exercises" or "war games", Doc. Exh. 103 (HI-4619) Doc. Book 7, English page 41, German page 78, contains a written description of the "Planspiel" which was held at Leverkusen in 1937. It is quite obvious from that document that it concerns an exercise held according to a previously conceived plan, i.e. that in this case "Plan" does not stand for "map" but for "design". It was attempted to show thereby, which measures would have to be taken by the plant, in case the output should be lowered owing to air attacks. There is no mention anywhere of "war games" or tactical exercises" such as are held by a General Staff. We are dealing here with a theoretical air raid defense exercise, as they were being carried out in Germany at that time. Leverkusen is situated close to the Western frontier of the Reich and was therefore greatly exposed to air attacks from the West. Colonel THOMAS who is mentioned in the documents, picked a large plant close to the frontier. His choice fell upon Leverkusen. The plant management could not raise any objections to that. At some later stage, such a theoretical preparation, a so-called "Planspiel" took place. The Prosecution refers to this event as a "war-game" or a "tactical exercise."

We are unable to see any proof of aggressive planning in a defense preparation. Even in view of his extremely skeptical viewpoint, the idea could not have occurred to Dr. KUEHNE.

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that this "Planspiel" constituted one of Hitler's preparations for aggressive war. At that time, Hitler was loudly proclaiming his love of peace, as was proven by the Defense in the course of this trial. Therefore, Dr. KUEHNE could not but view this "Planspiel" as a precautionary and defensive preparation. The program of the "Planspiel" shows in addition, that Laverjansen was without importance for armaments purposes and was merely described as essential for war and peace.

On the part of the plant, and especially on Dr. KUEHNE's part this "Planspiel" was not taken seriously in any way, as they did not believe in a war.

Evidence: KUEHNE-Doc. and Exh. 49, vol.2, page 107 and

KUEHNE examination, English transcr. page 10136

German transcr. page 10274.

Finally Prosecution Doc. Exh. 170 (NI-8461) Doc. Book 7, English page 17, shows clearly what was Dr. KUEHNE's personal attitude toward such air raid defense practices. During a conference of Plant Leaders he stated before approx. 200 gentlemen "that only that ought to be done, which the firm could be forced to do."

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c) Mobilization plans.

Prosecution Charge: Trial Brief, part I, page 17, par.3 and p.18.

Prosecution Evidence: Pros.Ech. 191 to 200, Doc.Book 8.

The Prosecution wants to see a new proof for collaboration with the Wehrmacht in the request, according to which the plants had to work out so-called "Job-plans". It can be seen at once from the Prosecution documents quoted above that these Job-plans were nothing else but "production plans" as they are correctly called in Pros.Ech.197, Doc. Book 8, page 18. It can be seen from the Documents themselves, that the question was to determine what lines of productions were to be permitted to continue or had to be continued, and how many and what kind of employees they had at their disposal for the purpose. The position concerning raw materials and the means of transportation was also determined. (see e.g. NI-8777, Ech.198, Doc.Book 8, page 21, par.2 and NI-8776, Ech.199, Doc.Book 8, page 24, par.1 and 2). It was likewise determined what would be available for export (see NI-8776, Ech.199, Doc.Book 8, page 26, par. 2.) Of course all plant managers were greatly interested in such production plans for their plants and went to a lot of trouble about them. For, if a plant did not get a production plan approved, it had to face the possibility of a complete shut-down, in case of war affecting its entire production for civilian needs.

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This had nothing at all to do with collaboration with the Wehrmacht even less with plans for aggressive war. Thus for example the Prosecution witness NOBLE states the following in Doc.NI-9051, Exh.200, Doc.Book 8, p.30 ff., par.2:

"It is to be assumed that the General Staffs of all powers occupied themselves with defensive and security measures of that nature, as can be seen from the international publications (e.g. Fuller)".

On page 18 of the Trial Brief (Exh.260, NI-4635, Doc.Book 9, English page 101, German page 126) it is stated that on 26 August 1939 i.e. 4 days before the outbreak of war, Leverkuehn received a secret letter from the Military Economy Office with the instruction that all personnel in essential war plants were to be left in their jobs. This was a governmental directive, which did not call for any action either on the part of the plant or of Dr.KUEHNLE.

Prosecution Evidence: Exh.2074 (NI-1A747) submitted during cross examination KUEHNLE, on 31 March 1948.

Counter Evidence: Re-direct KUEHNLE, 13 April, English trans. p.11283, German transer. p.11492.

A letter from Dr. KASCHKE, of Leverkusen, to Dr. HACHOFER, of Donau-Chemie, concerning "preparations for the industrial mobilization of the Donau-Chemie plants" deals with the same subject. Also for the Austrian plants these plans were very important, which determined on what basis a plant would be permitted to operate in case of war. A plant without such a plan would have been doomed to shut down during the war, owing to lack of labor and raw materials.

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It was therefore the duty of every conscientious Plant Leader to see that his plant was given production plans.

All state instructions concerning mobilization or production plans were measures such as are taken even to-day by every state as a precaution, without there being any aggressive intentions involved or deductible from it.

Prosecution Evidence: Pres.Exh.2071 (NI-15014) and
" " 2072 (NI-15013) both submitted during
cross-examination KUEHNE.

Counter Evidence: Examination KUEHNE, 31 March 1948, English transcr.
p. 10246/47.

Re-direct KUEHNE, 7 May 1948, English Prot. page 13840/42
German Prot. page 14165-14168.

KUEHNE-Doc. and Exh.17, Doc.Book 1, page 40/42.

In connection with Pres.Exh.2071 (NI-15014) - a report from KUEHNE to the Reich and I.G. agencies concerning a fire in the Leverkusen drug - warehouse caused by bombing attack during the night from 16 to 17 June 1941, the Prosecution asked Dr.KUEHNE during cross-examination (English trans.p.10246/47) to explain the meaning of the words "in anticipation of possible difficulties which might be encountered later on ...", implying thereby that these drug ware-houses were part of the sub-plan. As Dr.KUEHNE explained during his cross-examination, this had not been the case. That building was one of the oldest ones in the plant, with lots of wooden parts and the least suited for the purpose, of storing easily inflammable chemicals and packing materials. From 1936 or 1937 on KUEHNE had intended to

replace the old wooden structure by a modern concrete structure. Dr. KUEHNE made approx. 16 applications in his efforts to obtain a building license and building materials. In the above mentioned Doc. Exh. 2071, Dr. KUEHNE pointed out, that "in anticipation of possible difficulties which might be encountered later on" he had submitted his first application for the construction of a new pharmaceutical warehouse as early as Nov 1937. It follows from this, that Dr. KUEHNE was highly justified in his concern about the possibility that the building might burn down one day, due to inflammable chemicals being stored there. Also this incident bears not the slightest relation to mob-plans, aggressive wars and what ever other assumptions the Prosecution may harbor.

Proc. Exh. 2072 concerns a newspaper article, which, as testified by Dr. KUEHNE during re-direct on 7 May (English transcript page 13841) was written under his name by a female employee in the office of his secretary. The paragraph quoted, in which mention is made of mobilization and mechanization, deals neither with the war nor with aggressive war; the article, which has to be read in its entirety, neither shows that the author, far less Dr. KUEHNE, knew of any aggressive intentions on the part of Hitler. Mobilization is a concept, which is also known in the neutral countries, such as e.g. Switzerland.

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During the cross examination (English transcript p. 10243-45, German transcript p. 10376-80) the Prosecution confronted Dr. KUBINE with the documents

Proc. Exh. 2068 (NL-15005) and

* * 2069 (NL-15004).

It seems that on the basis of these documents the Prosecution is trying to construe that Dr. KUBINE was engaged in special activities concerning a collaboration with Wehrmacht agencies.

Exh. 2068 concerns an inquiry Dr. GAJEWSKI addressed to Dr. KUBINE, namely as to who was liaison man for Wehrmacht at the Bornagen plant. In the re-direct, Dr. KUBINE stated with reference to this matter (English transcript p. 10243/44, German transcript p. 11491/92) that Dr. GAJEWSKI, in his capacity as chief of the works for rayon, was interested to know the liaison man in Bornagen where rayon was being manufactured. The fact that in the years after 1933 the position of plant manager was successively given to 4 different persons apparently induced him to address his inquiry to Leverkusen. Besides, the matter was so trivial that Dr. KUBINE could not recall it any more.

This also applies to Proc. Exh. 2069. The document as such reveals that the appointment of liaison agents for the Reich Ministry of Economics and the Reich War Ministry were ordered by the authorities and that efforts were to be made in the interest of the plant to simplify the administration as much as possible by appointing one liaison man for both positions.

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f) War Contracts.

Prosecution Evidence: Exh. 2069 (NL-15009).

Counter Evidence: Examination KUNKE on 31 March,

English Transcript p. 10243

German Transcript p. 10379.

KUNKE Doc. and Exh. 120, p. 27.

THE WISE Doc. 282, Exh. 83, Document Book II,
p. 110.

The Prosecution asserts that according to the evidence at hand war contracts had to be incorporated into the mobilization plans. Dr. KUNKE testified during the cross examination that he did not remember such contracts having been concluded by LEVERKUSEN and that it was in Nurnberg where for the first time he saw a war contract for photographic paper. Since the LEVERKUSEN plant which manufactured photographic paper was controlled by Sparte III, this contract was concluded in Berlin and, as can be seen from the document, was transmitted to LEVERKUSEN for the purpose of information. Compared to the output of the LEVERKUSEN plant which manufactured photographic paper, the quota to be delivered under contract was negligible and so trivial that Dr. KUNKE never got to know of it. In 1938, when the contract was concluded, the monthly production capacity was 1 million square meters while the total quota of the so-called war contract amounted to approx. 30,000 square meters. These figures prove the unimportance of the contract beyond any doubt.

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In the cross examination Dr. KUEHNE was furthermore confronted with Exh. THE MEER 53, Doc. No. 282, Affidavit KUSTER, with reference to a LEVERKUSEN war contract for fog acid. In reply to this question Dr. KUEHNE explained that fog acid was the equivalent to chlorosulphonic acid, and acid used in perscetine for the manufacture of dyes and pharmaceuticals, and which the army was using for the setting up of smoke screens. This is no more confirmation for an intended war of aggression. Than the supply of photographic paper.

KUEHNE Doc. and Exh. 120 prove that LEVERKUSEN neither planned nor prepared an aggressive war.

g) Four Years Plan.

Prosecution Evidence: Pres. Exh. 2070 (NI-15015) introduced in cross examination KUEHNE,
English transcript p. 10245,
German transcript p. 10380.

The assertion of the Prosecution that only FARBEN people or people bonded to FARBEN were engaged in the Four Years Plan is being refuted by this very document of the Prosecution. In this case Dr. KUEHNE suggested Professor KRAUCH of the potassium products industry, because he himself had no connections to the Berlin authorities, who in his opinion curtailed the independence

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of Plant leaders more and more. The letter of recommendation for Dr. HUESBERG was a favor to a business friend, as the potash industry was interested in having one of its men in the Office of the Four Years Plan. Apart from that, the document only proves that Dr. KUEHNE made every effort not to have to release any members of FARBER staff from his plant.

Prosecution Evidence: Pros. Exh. 2073 (VI-1475), introduced in cross examination KUEHNE, Engl. transcript p. 10249.

Counter Evidence: Re-direct KUEHNE 7 May 1942,
English transcript p. 13842
German transcript p. 14158

This document is supposed to prove that the plants of the DONAU-CHEMIE were charged with special tasks for aggressive war within the scope of the Four Years Plan. The matter in question here is the building of a new sulphuric acid (SO_3) plant in the MOOSBIRBAUM factory. For years prior to 1939 the procurement of building material for factory installations had been subject to control by the Reich Office for Industrial Development (Reichamt fuer Wirtschaftsaufbau). The MOOSBIRBAUM factory had a very old-fashioned and rickshackle sulphuric acid plant which could no longer satisfy the acid-requirements of the long-established Austrian rayon industry. It was therefore necessary to build a modern plant. However, in spite of all endeavors this plant could only be put into operation in 1943 since, as witness Dr. SCHUEHL (KUEHNE Doc. and Exh. 58) testified, the completion of the SO_3 plant was repeatedly delayed because the Reich Planning Authorities classified it as not particularly essential to the war effort. This shows clearly

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that this sulphuric acid plant was neither planned for armament purposes nor in preparations of an aggressive war.

Prosecution Charges: "FARBEN procured and stored critical war materials in preparation for an aggressive war."
Trial-Brief, Part I, p. 28a.
"SCHACHT tells us that FARBEN accumulated large quantities of pyrites, the basic material for sulphuric acid."

Prosecution Evidence: Exh. 716, (E-128) D.B. 38.

English p. 94

Exh. 749, (NI-8843), D.B. 40,

English p. 85

German p. 117

Counter Evidence: Examination KUEHNE, English transcript p.

10147-48

German transcript p. 10283-84.

KUEHNE Doc. and Exh. 59, D.B.II, p. 126-127.

With the above quotations from the Trial-Brief of the Prosecution, Part I, p. 28a, the Prosecution wishes to prove that FARBEN stored large quantities of raw materials which were to serve as preparation for an aggressive war. In Pros. Exh. 749 the Prosecution quotes a letter from Liaison Office W, dated October 1938, in which the pyrite stocks for the various FARBEN plants are enumerated. The stocks for LUDWIGSHAFEN were for approx. 3 months, LEVERKUSEN 4 months, DORMAGEN 2 months, UERDINGEN 6 months, HOFHEIMST 4 months.

In his examination on 30 March (English transcript p. 10147, German transcript p. 10284) Dr. KUEHNE testified that pyrite

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had to be procured from Spain. As water transport frequently caused delays, especially in winter, it was necessary to accumulate stocks which would last several months. The supply figures quoted here exceed by no means quantities which have been customary for decades. This is also confirmed by Dr. KUBERT in KUBERN Doc. No. 59. Besides, SCHACHT did not speak of extensive pyrite stocks FARBEIN accumulated, as the Prosecution asserts, but he says the following in Pros. Exh. 716:

"FARBEIN was induced to accumulate additional pyrite supplies in the course of this winter."

In the cross examination (English transcript p. 10241) the Prosecution confronted Dr. KUBERN with Document NI-15025, Pros. Exh. 2067. This is a letter from Herr MEYER-KUSTER addressed to 4 gentlemen of FARBEIN, including Dr. KUBERN, and deals with the question of setting up an aluminum-oxide plant in central Germany.

The Prosecution thinks to be able to prove on the strength of this document that FARBEIN increased the production of light metals as early as 1935 in preparation of an aggressive war. With reference to this Dr. KUBERN expounded (English transcript p. 10241 ff.) that first of all FARBEIN did not build such a plant and that secondly on account of lack of foreign currency in Germany an increased aluminum production became necessary in order to replace copper and other materials, which had to be procured from abroad, by home products. The assertion of the Prosecution that we are here dealing with preparations for war is perfectly absurd.

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Prosecution Charge: Trial-Brief I, p. 264

"Creating and Equipping the Nazi Military Machine"

The magnesium plant of Moosbierbaum is mentioned on p. 44 as one of the most important items of the 1938 - building program.

Counter Evidence: Examination KUEHNE on 30 March, English transcript p. 10151/62,

KUEHNE Doc. and Exh. 117, supplement p. 302-308.

The assertion of the Prosecution that a magnesium plant came into being as early as 1938, is wrong. With reference to this, witness HAAGER states (KUEHNE Doc. and Exh. 117, p. 306-307):

"The outbreak of war put an end to all that. None of the plants turned out a product which might have been of particular importance for the Four Years Plan or rearmament or which might not have been manufactured cheaper and better by the FARBEN plants.

.....

The production costs in Moosbierbaum, where the vast terrain and the obsolete installations caused considerable general expenses, entailed constantly mounting losses. A closing down of the whole plant would have been inevitable had it not been possible in 1940, to secure for Moosbierbaum the construction of a petroleum cracking plant, and, subsequently, of a magnesium plant (underlined in quotation only)

..... For the Four Years Plan of the German war industry the existing old plants were of no importance At the time of the acquisition of the plants no one had even remotely thought of a cracking plant or the production of magnesia."

Prosecution Evidence: Pros. Exh. 2064, NI-15027, introduced in cross examination KUEHNE on 31 March 1948.

Counter Evidence: Re-direct KUEHNE 13 April, Engl. transcript p. 11281.

Exh. 2064 reveals that Dr. KUEHNE was in an extremely precarious situation when the Generaldirektor

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of the HERMANN GOERING WITNESS accused FARBER in the presence of high Party and Government officials of sabotage during the war. The Honorable Tribunal is well aware how dangerous such an accusation was in 1941 and it therefore does not require specific discussion on this occasion. If, therefore, Dr. KUBER could persuade Reich Minister of Economics FUNK to comment favorably on the efforts of FARBER in the field of the rubber, gasoline and nitrogens production - all inventions dating back several decades - his effort can only be regarded as averting a situation fatal for FARBER. On the other hand the document shows that FARBER was accused of sabotage, which obviously indicates FARBER's negative attitude to the Nazi state. This attitude was known in the business world and invited criticism. Dr. KUBER's efforts to wipe out this negative impression among the Nazi bigshots stand to reason as an essential safety measure. However, this document, too, has nothing whatever to do with the knowledge of aggressive wars, their planning or their preparation.

I have thus probed all documents the Prosecution amassed against my client with reference to Count I. I believe that I am quite objective in my claim that not one of these documents substantiates the assertion of the Prosecution. Experience has taught us that the knowledge of war or peace is on a level to which the individual citizen has in most cases only access when it is too late. While in a democratic state

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public opinion carries some weight, in HITLER's dictatorship plans concerning war or peace remained the secret of the dictator and depended solely on his decision.

The Prosecution is well aware of this fact and therefore tries to produce circumstantial evidence, having eagerly amassed the most irrelevant documents for this purpose. This alone explains why the Prosecution dragged the most trivial matters into the center of attention, twisting and turning them until they seemed to fit. The motivations of the IMT judgment show that these proceedings are legally irrelevant. The Prosecution did not attempt to bring direct proof of the fact that Dr. KUBERS knew HITLER's aggressive plans. Neither can such proof be brought. Circumstantial evidence, however, can at best be nothing more than an assumption and that only as long as the Defense can not refute it point by point, as was done in the case at hand.

Count II

Plunder and Spoilation

1. Austria

Prosecution Evidence: Exh. 2073, NI - 14750
 " 2074, NI - 14747
 " 2075, NI - 16006
 " 2076, NI - 15001,

All submitted during KUBARK's cross examination on
 31 March 1948.

Counter Evidence: Direct examination KUBARK English transcript page
 10249-51
 German transcript page
 10384-87
 re-direct examination KUBARK English transcript page
 11284
 German transcript page
 11492-94

KUBARK	Document	and Exh. No. 57, page 124
"	"	" " " 58, page 125
"	"	" " " 61, page 134 section 5 and 6
"	"	" " " 64, page 140, section 1,
"	"	" " " 65, page 142/143
"	"	" " " 117, page 302/308.

As a consequence of the Court ruling of 22 April, Count II of
 the indictment pertaining to the Skoda-Wetzlar chemical works and the
 Deutsch-Watrol carbide works as well as the Austrian Dynamit Nobel A.G.
 was dropped. I shall therefore summarize only that evidence once more
 which refers to Count I of the indictment, and which has been dealt
 with there.

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2. Safetoland

Prosecution Evidence Prosecution Exh. No. 2079, NI-13556,
submitted in the course of KUBARK's
cross examination on 31 March 1948.

Counter Evidence: KUBARK re-direct on 7 May and direct examination

KUBARK Document and Exh. 1, page 1-6
" " " " 67/68 page 146-149
" " " " 118, page 309-312.

The same applies to this Count of the indictment as to No. 1).
Therefore charges and counter evidence are mentioned here, only insofar
as they refer to Count I of the indictment. Pros. Exh. No. 2097
was dealt with in detail and corrected in the examination of Dr. KUBARK,
English transcript page 13945-48).
In any case Dr. KUBARK did not participate in the acquisition of the
plants mentioned in Count II.

Count III

Enslavement and mass murder.

Ferban's role in the slave labor program.

A. Knowledge of the members of the Technical Committee (TEA)

Trial Brief, Part III, Part 10:

"Ferban's own records, made in the course of its business, show the knowledge of these defendants and the extent to which Ferban employed slave labor."

On pages 11 and 12

it is asserted that the members of the Technical Committee had knowledge of the employment of foreign workers.

Page 11:

"(b) Two other original TEA charts entitled "workers" (Arbeiter) give the employment figures for each of the principal Ferban plants or combines as of 1 August 1944 and 1 October 1944....."

The charts show that a group consisting of concentration camp inmates, loan workers, etc. was employed at all plants shown on the chart dated 1 August 1944, excepting Huels and Heydobreck, and at all plants shown on the chart dated 1 October 1944, excepting Huels, Heydobreck and Jchkopcu,

(Exh. 1559, NI-3762-A, Doc. Book 68, inserted after English page 15, German page 16)

(Exh. 1560, NI-11412-A, Doc. Book 68, inserted after English page 18, German page 17)

Prosecution Evidence: Pres. Exh. 1318 (NI-4998), Doc. Book 68, English page 22, German page 20

Counter Evidence: examination of KUEHNE 13 April 1948, English page 11286, cross examination STRUSS on 20 November 1947.

KUEHNE Document and Exh. 106 and 107, Doc. Book 3, page 284-385.

The assertion of the Prosecution that the charts which were posted in the Technical Committee clearly indicated that

several Farben plants employed concentration camp inmates is incorrect. Dr. KUEBE first learned that concentration camp inmates had been assigned by the authorities for excavation work at the Auschwitz Plant from a report of Dr. MEROS, in the meeting of the Technical Committee of 20 April 1941. Prosecution witness JERUS confirms also that he did not learn of this fact until that time. The column in question in which the concentration camp inmates were entered in the charts is headed:

"Loan workers, foreign loan workers, Wehrmacht penal prisoners, inmates of concentration camps"

(compare KUEBE Document and Exh. 106 and 107). Dr. KUEBE knew that also at Ludwigshafen and Hoechst no concentration camp inmates were being employed. From this he concluded that none would be employed at the other plants either, especially since their managers in the Technical Committee had not reported anything with respect to these facts.

Prosecution witness JERUS testified as follows in Prosecution Exhibit 1318:

"I know from the figures which I received from Gestapo and, in 1941 was told by MEROS himself, that concentration camp workers were also used in Farben plants other than Auschwitz. I believe MEROS informed me of this unofficially.

(Translator's note: The following sentence is added in the German text but is not contained in the English translation of Document HI-3999: It was possible that this occurred during a TLA meeting but officially this matter was not discussed).

(underlined in quotation only).

During the course of the presentation of evidence we learned from witness JERUS that a large number of charts were hanging on the walls of the conference room and that often one hung over the other. The mere fact that such charts contained data with respect to the employment of concentration camp inmates in the individual camps is no proof that the individual member of the Technical Committee studied these charts and thus gained knowledge of their contents.

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Insofar as Dr. KUEHN had knowledge of the fact that concentration camp inmates were employed for excavation work at the Furber plant in Auschwitz, he is not responsible under penal law. It has been proved that the workers were assigned by the authorities. Furthermore, it has been proven that the concentration camp inmates were utilized in Auschwitz in accordance with orders from GOERING and HITLER. Dr. KUEHN, as the head of the plant, knew from his own experience that laborers could no longer be chosen freely, but that the plants were forced to accept laborers assigned to them by the authorities. In my plea for Dr. KUEHN I offered legal explanations with respect to the question if the mere fact of slave labor having been employed in the German industry can be regarded as a violation of international law, i.e. of the Hague Rules of Land Warfare and of Control Council Law No. 10. This same problem, including the question of the existence of a state of emergency also arises in connection with the employment of concentration camp prisoners. I should therefore with respect to this question like to refer to the legal argumentation of my plea. Dr. KUEHN had merely the impression that the labor allocation for the construction of the Auschwitz plant was handled in the normal way customary at that time.

Apart from that, my Defendant is entitled to claim the existence of a state of emergency and the unexpectedness constituted grounds excluding guilt.

Closing Brief RUEBKE

In the course of his direct examination, as well as in the course of the re-direct, Dr. RUEBKE stated that he had no opportunity to protest successfully against the employment of slave labor (RUEBKE Examination English transcript page 13835, German transcript page 14180). The terror system of the Nazi Regime would have interpreted any complaint or any representations on the part of my client which might have been directed against the employment of concentration camp prisoners as a defeatist attitude and as sabotage during war time, which offenses were punished with the harshest penalties by the infamous People's Court. For details I refer, with respect to this question, also to the legal explanation in my plea. The American Tribunal No. IV recognized in its judgment against FLICK that among other things there existed an emergency in case No. V, since the Defendants could not have avoided the employment of slave labor. This legal opinion of the American Tribunal applies also in this case.

Dr. RUEBKE never heard anything of the alleged bad treatment of concentration camp prisoners by employees of Forben or of any other persons. The Prosecution was not able to prove that Dr. RUEBKE did. On the other hand Dr. RUEBKE could assume that the concentration camp prisoners received humane treatment insofar as their treatment by Forben (i.e. by the men in charge of the construction work at Auschwitz) was concerned. Forben was well-known in Germany for its exemplary welfare attitude and achievements. It was only a few months ago that the German trade unions opposed a complete dissolution of Forben,

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since the workers feared that the welfare institutions and services which Perben offered them might be reduced or that they might lose them altogether. The Leverkusen plant was particularly careful with respect to the welfare of foreign workers. As will be explained later, the Prosecution did not produce one single foreign worker from Leverkusen as a witness who complained about the treatment at Leverkusen. Those who have seen the nursing welfare establishments and installations at Leverkusen will be convinced that Dr. KUEHN had no doubt that the concentration camp prisoners were treated humanely by Perben. In this respect I refer to the basic information of my colleague Dr. JILCHER, who described to the Honorable Tribunal the most welfare services of Perben which corresponded to the general ideas of the Vorstand. Inasmuch as there was no reason why Dr. KUEHN should have examined the treatment of concentration camp inmates, he cannot be made responsible under panel law, either as culprit or as participant. Guilt under panel law pre-supposes knowledge of the punishable facts. Dr. KUEHN did not have such knowledge ^{and did not need to have such knowledge,} since he had nothing to do with theuschwitz plants and there was no reason for his intervening.

B. Knowledge of the members of the advisory council of the enterprise.
Trial Brief, Part III, Pages 18-21.

The Prosecution wants to conclude from the fact that the Plant Leaders of the Iker-er plants - thus also Dr. Hans KUEHN -

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met from time to time in conferences provided over by the Defendant SCHNEIDER - that they were informed with regard to all events at those Farben plants over which they had no authority.

This assertion has not been proven. It is also incorrect. In these conferences mostly general directives for welfare questions, local regulations etc. were discussed, insofar as they were of importance for all plants. Occurrences at the individual plants were not the subject of the discussions in these meetings. It could even not be their purpose since, according to the law concerning the National Labor Regulations every Plant Leader was alone responsible for his plant and it was out of question that as a result of these conferences another member of the Vorstand would share any responsibility (compare SCHNEIDER Exh. 35 and 36, DocBook IX).

G. Toko (Technical Commission)

Trial-Brief, Part III, Page 13 mentions that also the Toko dealt with problems pertaining to foreign workers and that Dr. KUEHN was the chairman of the Toko.

This assertion of the Prosecution was disproved in KUEHN's examination. (31 March, English transcript, page 10222). KUEHN never was a member of the Toko, much less its chairman.

D. Miscellaneous.

Prosecution Evidence: Pres. Exh. 1396 (NI-7110), D.E. 70, English Page 53, German Page 120.

Counter Evidence: Examination KUEHN 30 March 1948, English Page 10196.

The Prosecution attempts to prove by submitting the report of that meeting of the mass committee in the Offices of the Plenipotentiary of Chemistry, that there were special committees whose competency extended beyond the plants.

As Dr. KUEHN stated in his examination this was a committee with which he never had anything to do. The document itself proves clearly why these minutes were sent to him, in particular namely because it says towards the end: "So it resolved that, insofar as Dr. KUEHN, Leverkusen, approves of it, the next meeting of the mass committee will take place at Leverkusen." The securing of this approval, which concerned the agreement with respect to the next place of meeting, was the only reason why Dr. KUEHN received the minutes in this one case.

B. Knowledge of the members of the Vorstand about Auschwitz.

Prosecution Evidence: Trial Brief, Part III, Page 105:

"The responsibility of the Vorstand for the events in the Farben plant at Auschwitz is evident..... After having been empowered, by the Vorstand, the Technical Committee again and again authorized monetary funds during the construction work.

It is asserted on Page 106,

"that all of them (that is, all members of the Vorstand) must have been informed with respect to the events there (Auschwitz)".

Counter Evidence: Examination KUEHNLE of 31 March 1948, English transcript page 10217, 10222.

KUEHNLE Document and Exh. 108 till 110, Doc. Book 3, page-286 + 290.

By pointing out that the Vorstand made available considerable funds for Auschwitz, the Prosecution attempts to make the Vorstand and, thus Dr. KUEHNLE, responsible for the alleged occurrences in the Farben plant at Auschwitz. We already commented on this when we dealt with the question of the knowledge of the members of the TDJ with regard to the employment of concentration camp inmates. As has been proved, Dr. KUEHNLE had no reason whatsoever to concern himself with details at the Auschwitz plant or even to exercise any control. He knew that the Auschwitz plant had been built as a Government assignment and that the funds necessary for it had to be supplied by Farben. As Dr. KUEHNLE explained, ALLROD and HUETEFICH, who were responsible for the construction work, had proved at the Hvale, Schkopau and Leuna plants (which were of approximately the same size) how well constructed and equipped

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these plants were in technical respects as well as from the point of view of social welfare. Thus there was no reason for any lack of confidence or for supervision. A continuous control of the conduct of business by other members of the Vorstand was not customary at Farben, because of the general system of decentralization there, and it would not have been tolerated by the members of the Vorstand; concerned it cannot be legally demanded, as my colleague Attorney von METTLER pointed out with respect to the question of the total responsibility of the Vorstand. Considering the vast dimensions of the combine and its historical development, the greatest possible independence with regard to initiative and thus individual responsibility of the members of the Vorstand was necessary. In accordance with its historical structure, the Farben was more of a holding company than a uniform trust. Its Organization cannot be compared with that of any other trust, not even with the chemical Dupont trust and ICI, which are equally large. With regard to the latter, the members of the board were all at the same place, for example, at Wilmington or in London and the various experts bore full responsibility for directing the plants from there. There were only subordinate plant managers at their plants. It was altogether different with respect to Farben. Here the members of the Vorstand were distributed all over Germany, directing the plants or the distribution agencies, and met only every two months in order to exchange information. Therefore, merely for technical reasons, they could not be informed about everything.

In view of the great scope of the construction^{task}/at Auschwitz general lump sum credits were authorized. In this way the members of the TEA learned of the progress

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of the construction work only indirectly, which was even more true in the case of the Vorkstrad. Thus for example, it happened that HIROS did not announce the extension of hutment camp I-IV "for the accommodation of additional foreign laborers, including concentration camp inmates," until the TLM meeting of 15 December 1942, although camp IV had been started at the beginning of 1942 and was completed as early as September 1942. This camp IV, of which Dr. KUBIEK only learned in Nuernberg and then under the name of 'Kosowitz' still was mentioned in 1944 - in a credit reference - under the name of 'Housing hutment camp IV'.

There is no connection between Furter and the events at the Auschwitz concentration camp. In particular did the Defendant KUBIEK know nothing of atrocities and mass murders in the Auschwitz concentration camp or in other concentration camps.

Dr. KUBIEK did not know any concentration camps before May 1945 with the exception of Auschwitz, Dachau and Theresienstadt. He mentioned the reasons for this fact in his examination. Drastic measures which enforced the secrecy in Germany prevented the facts about concentration camps from becoming known. Document and Exh. 108-110 point most emphatically to the dangers to the personal security and life of the individual in cases where this secrecy was not adhered to.

F. Foreign workers in the Leverkusen Plant.

Introduction:

In vol. 70 of its document books, the Prosecution has attempted to prove that housing, treatment, feeding and medical care, provided for the foreign workers in the Leverkusen plant under Dr. KUEHNE's management, were unsatisfactory and that foreign workers and prisoners-of-war were employed in an illegal manner. This volume 70 for Leverkusen comprises 26 documents of which 16 refer only to the period after 31 July 1943, the 17th document (Exh. 1371) comprising 16 documents in itself, contains 9 documents which also deal only with the above period. On that day, Dr. KUEHNE resigned from his office as Plant Leader and he thus ceased to be responsible for the Leverkusen plant. Consequently, he cannot be held responsible for events after ^{the} date of his resignation. The documents in questions are as follows:

Pros. Exh.	1371 (NI-5765), section 8 - 16,
" "	1379 (NI-8999),
" "	1380 (NI-6970),
" "	1381 (NI-7115),
" "	1382 (NI-8986),
" "	1383 (NI-6971),
" "	1385 (NI-9373),
" "	1386 (NI-1071),
" "	1387 (NI-8968),
" "	1388 (NI-7073),
" "	1389 (NI-7109),
" "	1390 (NI-8992),
" "	1391 (NI-7100),
" "	1392 (NI-8961),
" "	1393 (NI-8964),
" "	1394 (NI-8962),
" "	1395 (NI-1076),

Except for Prosecution Exh. 1371 section 8, 1385 and 1392, all above mentioned documents deal with new developments which were not a natural

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result of events prior to 31 July 1943.

In the interest of the proper management and the good reputation of the Leverkusen plant, Dr. KUEHNE's Defense Counsel has also dealt with assertions by the Prosecution for which Dr. KUEHNE is not personally responsible. All citations from such documents will be marked here with an asterisk.

1. Employment

a) General

Prosecution Evidence: Pros. Exh. 1370 (NI-6125), Doc. book 70, English transcript 1-20, German transcript 1-33.
" " 1371 -partly *- (NI-5765), Doc. book 70, English transcript 21-30, German transcript 34-46,
" " 1387 (EC-194), Doc. book 67, English transcript 10, German transcript 9

Counter-Evidence: FRANK Examination of 14 January 1948
KUEHNE Examination of 30 March 1948, English and German transcript pages 10312 to 10351.
KUEHNE Examination of 31 March 1948, in the afternoon, English transcript pages 10278 ff, German transcript pages 10346 to 10351.
STUEFANG Examination of 13 November 1947, in the afternoon, English transcript page 3725, German transcript page 3747.
KUEHNE Doc. and Exh. 50 Sect. 5 Doc. Book 2 page 1100
" " " 69 " " 2 pages 150 to 152
" " " 116 " " 3 pages 300 to 301.
Prosecution Exh. 1392 (NI-6961) Doc. Book 70 English transcript pages 120-126, German transcript 191, 193 and the following.

The problem of labor supply started with the outbreak of war in the course

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of which an ever increasing number of men were drafted into the forces. On the other hand, all plants, thus also Leverkusen, were ordered to step up production which obliged the plant management to meet a specified target. Thus, in order to replace the labor lost through Wehrmacht drafts, the plant leader had to accept workers sent to him from the labor office unless he wanted to make himself liable to the most rigorous penalties. This was also Dr. FUEHNE's position in Leverkusen. At first, he tried to get German labor from the Labor Office as a replacement for the workers who had been drafted for military service. Later on, he had to put up with foreign workers who were sent to him by the Labor Office, a fact which was not at all to his liking. The special organization of the chemical industry does, it is true, not demand considerable physical exertion, but it calls for quick perception and reliable reaction to certain work processes which can only be attained by long experience and a certain measure of intelligence. The assignment of foreign workers to this type of work entailed great difficulties. Apart from a lengthy period of training, the variety of languages rendered the passing on of experiences more difficult and increased the potential rate of accidents. Prosecution Exh. 1370, on page 12 of the English transcript and on pages 20 and 21 of the German transcript, refers to a concrete example of such dangers. It shows the magnitude of the difficulties resulting from the employment of foreigners and the absurdity of the claim that the plant could have benefitted from it.

Apart from the fact that the individual working performance of a foreigner must needs be smaller than that of a German worker (ratio 3:2) the cost of employing a foreign worker was much higher than that of a German worker, i.e. 28.39% compared to 17.31% of the total pay roll. Since it was impossible to reject unsuitable workers who had been sent by the Labor Office, Leverkusen tried on their own to recruit suitable volunteer-workers, after having obtained the necessary permission from the Labor Office. This form of recruiting volunteers was an old practice in Germany. For decades workers, especially Poles, but also Italians, Slovaks, Belgians and Dutchmen had come to Germany to take up seasonable or permanent employment in agriculture or industry. According to the testimony of witness STUTHFANG, who had been Ministerial Councillor with BAUCKEL, their number amounted to half a million. The chemical industry, for the first time since its inception, saw itself forced to adopt the same method of recruitment, a method which was by no means unknown in the mining and steel industries. The workers who voluntarily came to Leverkusen as a result of this recruiting campaign, may be omitted in our evaluation of conditions existing at that time, since their presence at Leverkusen does not contain an element of criminal offense. But the recruiting of voluntary workers was soon stopped by the Government and the plants had once again to fall back on labor allocations from the Labor Office. The plant could not work on a basis of selection among those allocated workers. Nevertheless, Leverkusen tried, time and again, to retain as many German workers as possible.

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Thus Prosecution Exh. 1392 shows, for example, that, as late as 4 August 1944, the plant asked for at least 174 German workers when reporting 425 vacancies. In accordance with legal regulations, these requests had to be made "according to the applicant's best knowledge and belief" and the instructions on the form called for the exact number of absolutely necessary German workers, in case of requests for German labor. In his examination, (English transcript page 13858) Dr. KUEHNLE testified that it was not until after his resignation at the end of 1943, that he learned that a part of the workers sent to the plant, were foreign workers who had been sent to Germany against their will. This statement is quite credible since Dr. KUEHNLE resigned as early as the middle of 1943, whereas the large majority of forced labor came to Germany after that date. The Prosecution has not produced any counter-evidence against this statement.

b) Prisoners of War.

Prosecution evidence: Exh. 1287 (20-194), Doc. Book 57, English page 10
German page 9.

- * 1371, Section 2, Subsection 4, (NI-5755)
Doc. book 70, English page 21,
German page 37,

- * 1392 (NI-5961), English page 120
Doc. book 70 German page 190 and the
following.

Counter-evidence: KUEHNLE Examination English Transcript pages 10219/20
KUEHNLE Doc. and Exh. 112-116, Doc. Book 3 pages 294 to
302.

Every Plant Leader in Germany, whether in industry, in commerce or
agriculture,

was forced to employ prisoners-of-war, if they were sent to him. The employment of prisoners-of-war in Leverkusen was strictly in accordance with the provisions of the Geneva Convention and under the supervision of the Stalag, i.e. the military supervisory agency. The Prosecution assertions that the Leverkusen plant employed also prisoners-of-war "in the Poison Gas Section" and in the "Gunpowder and Explosives Section" has been conclusively refuted during the examination of Dr. KUEHNE and by KUEHNE Doc. and Exh. 112-115.

c) Child labor:

Prosecution evidence: Exh. 1371, Section 3, (NI-5765) Doc. book 70
English pages 21/22

Counter-evidence: KUEHNE Examination 31.3., English transcript 10270.

KUEHNE Doc. and Exh. 93, Section 7, page 218
" " " 103, 104, pages 278-281,
" " " 119, page 322.

On the strength of a remark in the minutes of the Directors conference, on 13 January 1942, the Prosecution claims that the Leverkusen plant employed children. These minutes under section 13, No. in fact, mention juvenile Polish workers. But during his cross-examination, KUEHNE stated that juvenile workers are not children but young people of about 18 years of age. This statement is erroneous in so far as the term "juvenile" is customarily used in Germany with reference to all

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young persons above school-leaving age, i.e. teen-agers between 14 and 18 years of age. During the time in question, that is during January 1942, there were no foreign children in Leverkusen. Only in November 1942, thus after Dr. FURBER had left, the first Russian families with children began to arrive in Leverkusen. Then the parents approached the plant with the request for employment of their older children, who outside of school hours were without supervision during the day, children of 12 to 14 years were employed for light work, such as the running of errands, washing of glass containers and all odd jobs. At first, working hours were set at a maximum of 4 hours and later on, when it was possible to increase the number of hours, it was left to the discretion of the parents or children whether or not they worked beyond the original number of working hours. The initiative for the introduction of children into the work process did not come from the plant and the plant never used any pressure to have the children work there. But it was introduced in accordance with the parents' specific request who did not wish their children to loiter in the camp without any supervision. The employment of these "children" was based on a very reasonable idea and it was the privilege of the Prosecution to construe this incident, which does not even concern Dr. FURBER, into a "crime against humanity". I shall later on show that these "children" received special care in the form of supplementary rations on the part of the plant.

d) Assignment of Labor

Prosecution charge Trial Brief III page 26

" A transcript, 4 May 1943, of a Directors conference at Leverkusen, makes reference to the proper utilization of Eastern labor. ... A letter dated 15 January 1944 from Leverkusen to the Opladen Labor Office, states that 5 French Prisoners-of-war have worked for a year in the technical sector and that their withdrawal would endanger production."therefore Farben could not agree to release these workers unless equivalent replacements were received. This indicates, among other things, that Farben had no hesitancy to oppose Nazi agencies when such opposition served its interest".

Prosecution evidence: Pres. Exh. 1371, Section 7 (NL-5765), Doc. book 70
English page 23, German page 40.
" " 1385 *) (NL-9373), Doc. book 70
English page 96, German page 162
" " 2061 *) (NL-11713)
" " 2062 *) (NL-14029)
" " 2063 *) (NL-14030).

Counter-evidence: KUEHNE Examination on 30 March, English transcr.
page 10182 and
English transcr.
page 10231.
KUEHNE Re-direct Examination on 7 May, English
transcr. page 14177 to
14181.
Prosecution Exh. 1392 (NL-6961), Doc. book 70,
English transcript
126, German transcr
196

The above mentioned sentence from the trial brief, on the subject of the more adequate utilization of Eastern workers, does not mention a word of excessive strain which the Prosecution evidently wishes to intimate. The foreign workers had to be employed for the type of work to which they had been assigned by the Labor Office. Thus they had to be employed for regular work in the plant work shops and could

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not be called upon for other work in such subsidiary plants as agricultural enterprises etc. Moreover, the working hours of the foreigners were the same as those of German workers.

In the case of the 5 French prisoners-of-war, the Prosecution could have saved themselves the trouble of preferring a charge if they would have quoted the whole of the letter to the Opladen Labor Office used by them as documentary evidence. For this letter reads out in accordance with your instructions, the above mentioned persons will, naturally be at your disposal, on Monday morning."

In this connection we pointed to a translation error in Prosecution Exh. 1385, Doc. Book 70 page 9. The passage in question reads as follows "the I.G. could not agree to the release of these workers" which is meant to intimate that the I.G. tried to prevent the release of these prisoners-of-war. In reality it was not a question of release from imprisonment, but of transfer to a different place of work. Thus the translation should have read "cede" instead of "release" for the German word "abgeben".

Prosecution documents Exh. 2081-) - 2083*) deal with the violation of work contracts by Dutchmen. First of all, the fact that the persons in question broke their contracts, proves that such contracts existed, which

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means that they came to Germany of their own free will. Persons doing forced labor had no contracts. All these cases occurred after Dr. KUBINK's resignation from his post. But in the interest of establishing the real facts, he dealt with them in his examination. Exh. 2082-) and 2083*) give no indication of the active co-operation on the part of the Levenskusen plant in returning the two Dutchmen, dealt with in this document.

2. Treatment.

Prosecution Evidence: Pres. Exh. 1374 (NI-8995), Doc. book 70,
English page 46,
German page 104,
" " 1386*), (NI-1071), English page 98,
German page 163,
" " 1384 (NI-8997), English page 88,
German page 151,
" " 1391*) (NI-7100), English page 118,
German page 190,
" " 1390*) (NI-8992), English page 111,
German page 179,
" " 1371 section 15*) (NI-5765),
English page 28,
German page 75,
" " 1371 section 11*) (NI-5765),
English page 26,
German page.

Counter-Evidence: KUBINK Examination of 30 March 1948
English transcript pages 10189, 10190, 10201,
10203, 10266, 10271, 10273.

KUBINK-Doc. and Exh. 50 section 6, Doc. book 2,
page 111.
" " " " 71-81, Doc. book 2,
pages 155-175.
" " " " 89-101, Doc. book 3,
pages 201-272.

In a report by Dr. FURST, an employee of the Vowl Berlin, in which he gave an account of his journey to the Eastern front, (Exh. 1374)

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the author makes the following statement: "A responsible party expressly asked me to do everything within my power to make it clear within the firm that all abuses of foreign workers at home would have to be paid for with German blood in the field." The Prosecution believes to prove by this sentence that the foreign workers in Farben were badly treated and that Dr. FUERST's remark refers to the alleged bad treatment at Farben. Apart from the fact that Dr. FUERST was not in contact with the individual Farben plants, especially not with Leverkusen, and he thus could not have gained a clear picture of the treatment in the individual Farben plants, there is no evidence whatsoever to show that this general remark in a camp report, like the one by Dr. FUERST, was meant to refer to Farben.

The Prosecution goes on to argue that, for a time, the unsatisfactory treatment of foreign workers even went as far as to deny the Poles in the Farben plant at Leverkusen the right to take leave, contrary to legal provisions. (Prosecution Exh. 1386*) In KUEHNE Doc. 97, Witness Hermann MORSEH explains these incidents which also occurred after Dr. KUEHNE's resignation:

"This decision resulted from an objection to further furloughs for Poles by the competent Labor Office which was based on the steadily increasing number of reports concerning the non-return of Poles from furlough."

On 16 March 1944, this decision was rescinded again, after it had practi-

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only not been carried out at all, in the meantime."

Furthermore, the witness proves in a number of supplementary statements that, in accordance with unofficial arrangements between the plant officials and the Labor Office, Polish workers were regularly going on leave even at a time when leaves had been officially suspended.

During the case-in-chief, the defense of Dr. KUEHNE produced a number of documents which prove that Dr. KUEHNE's attitude to the foreign workers in his plant was the same as to his German workers and that he gave them as much freedom as possible, even when this amounted to a violation of official instructions. Thus the Catholic priest of the church of St. Joseph in Leverkusen, reported that he had made arrangements for special services for French, Belgian, Dutch, Polish and Ukrainian workers in their own language. A young French priest who through the offices of a French firm had had himself recruited as a worker in the Leverkusen plant, in order to work secretly as religious adviser among his countrymen, officiated in person. In spite of Gestapo threats all this took place without any interference on the part of the plant, although these facts were an open secret; I am convinced that in another place and another plant, all those concerned including myself would have been up against great difficulties.

But in Leverkusen nothing was done to interfere. On the contrary, when, after 3 months, the contract with the French firm for the services of the working priest expired and the priest

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expressed the wish to stay on, I confidentially informed Farben that the man in question was a priest and I succeeded in having him accepted immediately, as a worker in the plant. Thus he was allowed to continue to work as a priest and religious adviser without being molested," (KUEHNE Doc. and Exh. 89, Doc. Book 3 pages 1 to 2).

During the presentation of evidence for Dr. KUEHNE, the housing of foreign workers in the huttled camp of the Leverkusen plant, was dealt with in detail. There are numerous documents to support the fact that Dr. KUEHNE, in his capacity of Plant Leader, took great care to procure for the foreign workers the kind of accommodation where they could feel at home and that, during the construction period, he kept himself informed of the developments in the camp. (KUEHNE Doc. 75 pages 163-164, KUEHNE Doc. and Exh. 100, ROETTER Affidavit, pages 246-270, will prove to this Honorable Tribunal, the satisfactory condition and excellent equipment of the huttled camp, which is demonstrated by a large number of photographs. Furthermore, this is proven by the fact that, after the end of the war, when the camp had greatly deteriorated owing to the latest ravages of war, American and British officers described the living camp as excellently equipped and they did not only consider it adequate for D.P. camps but even for their own troops. (KUEHNE Doc. and Exh. 76 pages 165-168).

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The Prosecution has not made any charges with regard to bad or inadequate food for the foreign workers at the Leverkusen plant. Nevertheless, as proof of the absolutely correct treatment of foreign workers, the Defense has secured a number of documents which are impressive evidence for the great efforts which were made in Leverkusen to provide better food for the foreign workers through supplementary rations beyond the officially proscribed food allocations. These supplementary rations were equally divided between German and foreign workers. Children were particularly well looked after. They received highly nutritious supplementary food, and well trained staff attended to the preparation of their meals. The meals served in children's nurseries were so liberal that the juveniles who did voluntary work in the plant always received an extra meal when they returned home at night. (KUEHNE Doc. Exh. 82-87 pages 176 to 198).

3. Medical care.

Prosecution evidence: Exh. 1379 *), (NI-8999), English page 73, }
German page 132, } Doc.
" 1371 *), (NI-5765), English page 27, } Book 70
German page 62, }

Counter-evidence: KUEHNE Examination, English trans. page 10198 ff.
KUEHNE Doc. and Exh. 95-96, pages 223-237.

In Doc. Exh. 1379, the Prosecution has submitted the correspondence between the Deputy Commissioner for Special Questions

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of Chemical Production and the Farben plant in Leverkusen. Page 7 of the index of Doc. Book 70 contains the following passage "25% of the total labor force was reported sick of typhus". On this subject, Dr. KUEHNE has made detailed statements on page 10210 of the English transcript. The Prosecution assertion that 25% of the total strength were suffering from typhus is a distortion of facts. The first letter, stated, it is true, that "about 25% of the foreign workers are supposed to be suffering from typhus". But the third letter in this document, i.e. one from the Leverkusen plant to the Commissioner, dated 29 September 1943 explains in full that the report in the first letter "is grossly exaggerated in some points and in others practically completely untrue". In the whole "Eigensheim" camp, to which this report referred, there were only 11 typhus incidents; prompt and energetic medical intervention succeeded in preventing the epidemic from spreading. 2 of the 11 cases had fatal results, the other 9 recovered. "On one occasion the camp was unexpectedly inspected by 2 Medizinische from the Medical Inspection Office and both men described the medical installations of the camp as satisfactory." The conscientious and liberal manner in which medical attention was given at Leverkusen, is proved by the detailed report of the chief physician of the plant's own out-patients' department (KUEHNE-Dec. 95) and by the report of the worker dentist (KUEHNE-Dec. 96).

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KUEHNE Exh. 95, section 5, page 229, also deals conclusively with the Prosecution charge of abortions.

A. General remarks.

The documentary evidence submitted here on behalf of Dr. KUEHNE, gives detailed descriptions of the various additional installations in the hutted camps, such as sick-rooms, nurseries, sewing circles, hair-dresser's shop etc. as well as cultural and sports facilities.

(KUEHNE Exh. 92, 93, 94, 69 sec. 3) Since the Prosecution asserted that no schools had been created in the camps of the Farben plants, I should like to stress here that Leverkusen, on their own initiative and not by order from above, set up a camp school apart from infant-nurseries and kindergartens. (KUEHNE Doc. 93, sec. 6, page 215).

We believe that we have proved conclusively that the foreign workers in Leverkusen enjoyed the greatest care and attention in every sphere and that the plant management did everything within their power to eliminate all shortcomings, without delay, and that it was Dr. KUEHNE's ^{attitude} personal ^{to case}, to the best of his abilities, the lot of foreign workers so far from home.

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Dr. KUEHNE always held the view that good work could only be achieved by good treatment. And this was the principle underlying his actions irrespective of the nationality of the workers of his plant. Long after the war, the Leverkusen Camp for foreign workers was used as a D.P. camp. Many of the workers formerly employed in the plant stayed in the camp for a long time. Not once did they lodge complaints against Dr. KUEHNE or commit an act of revenge against their former superiors or colleagues. On the contrary, even later, when they had moved to other places, they showed their attachment by letters and visits. This is surely the best proof for the attitude and the spirit in the Leverkusen plant.

Signed: Dr. MATH

Attorney-at-Law.

CLOSING BRIEF KUEHNE

CERTIFICATE OF TRANSLATION

17 June 1948

We, hereby certify that we are duly appointed translators for the English and German languages and that the above is a true and correct translation of the Document : CLOSING BRIEF KUEHNE.

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CLOSING BRIDGE, KULLER
(BENEFIT)

Case 6
Defense

TRIBUNAL VI

CASE VI

CLOSING-BRIEF

for

Dr. Hans KUGLER

NUREMBERG, 2 June 1946.

Submitted by
the Defense Counsel

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Heinz



The charges cover a pretty long period of the I.G.'s activity. Contrary to most of the other defendants, Dr. KUGLER obtained only very late an important position in the I.G. Therefore, when considering his responsibility for any of the Farben's actions, it is important to find out what sort of position he was holding at the time, when according to the Prosecution's opinion, the crime was committed. As the Prosecution charges the defendants with participation in the preparation of HITLER's war of aggression, the period beginning in 1933, the year of HITLER's seizure of power, is of special importance; it was only from this date on that HITLER could intervene actively in the German government. For that reason it has to be examined first of all what kind of position Dr. KUGLER was holding at the time of HITLER's seizure of power and what kind of position he obtained in the following years, in order to establish to what extent he can be charged with the responsibility for the happenings.

I.

The Prosecution's arguments (NI-5008, Exhibit 305, Book 11, Engl. Page 123, affidavit Karl von HEIDER) some details of which were corrected in Herr v. HEIDER's cross examination (Transcript German Page 1630, Engl. Page 1646/47), agree with the curriculum vitae which has been submitted as affidavit by Dr. KUGLER (KUGLER Document 1, Exhibit 1, Book I, Page 1). From it the following can be seen: In 1921 Dr. KUGLER entered the employment of the Dye works, formerly Meister LUCIUS and BREUNING, Hoechst, one of the predecessor firms of I.G. Farben. After a training period in the department "Dye sales Germany" he was working exclusively in departments which dealt with international conventions, particularly with cartel-agreements with Swiss and French dye factories and the English dye-stuff.

producer ICL. His place of work was the management secretariate and the management department. His field of work included: preparation of convention agreements and the handling of all work connected with them. Later on, he also took part in negotiations leading to the conclusion of cartel agreements.

In 1933 he was made a Prokurist; in 1934 he received the title "Direktor". He thus became one of the 273 Prokurists of the I.G., 66 of whom had the title "Director", (Affidavit BOJUNGA, KUGLER Document 2, Exhibit 2, Book I, Page 12).

It was not before 1934 that Dr. KUGLER handled the sales, especially the export sales in the dye-stuff field. At this time, he took over the management of the dye sales agency for Hungary, Rumania, Yugoslavia and Czechoslovakia (NI-9754, Exhibit 304, Book 11, Page 121, NI-6008, Exhibit 305, Book 11, Page 123). In addition he retained the management of the "Directorate Dyes".

Only in the beginning of 1945 he obtained a new field of work within the Sales Company, when, after the death of the Vorstand member WAIHEL, he was scheduled to take over the Dye sales for the countries Bulgaria, Rumania, Greece, Albania and Turkey, a work which in view of the military events was never actually carried out.

The Directorate Dyes was not an independent auxiliary department for the commercial Vorstand members of the Sales Combine Farben. It mainly acted on directions of the Vorstand members (personal interrogation KUGLER, Transcript German Page 12797, Engl. Page 12549). It performed preparatory work and had to assist and to advise the Vorstand members. With regard to external matters, however, it could not act on its own responsibility.

It is evident from Dr. OVERHOFF's testimony who also was in charge of a sales department for the South American Countries, that the other sales departments for dye-stuff were not under the control of the "Directorate Dyes".

He stated that Herr von SCHWITZER and WAIHEL were his immediate superiors (Transcript German Page 5802, Engl. Page 5762).

In 1937/38, Dr.KUGLER became a member of the Dye-stuff Committee. The dye-stuff committee was a body which, according to the testimony given in cross-examination by the defense witness Dr. KUEPPER (Transcript German Page 1934, Engl. Page 1936), mainly dealt with sales problems in the field of dye-stuff. Production problems were only dealt with in an infernary way.

In 1940, Dr.KUGLER became a member of the Commercial Committee of the Farben (Document NI-9754, Exhibit 304, Volume 11, Page 121). In his testimony Dr.KUGLER stated (Transcript German Page 13797, Engl. Page 12549) that he held the position of an expert adviser to his superiors in the Commercial Committee. The Prosecution witness Dr.Frank-Fahle stated in his cross-examination (Transcript German Page 1999, Engl. Page 2010/11) that the autonomy of the Sales Combine was not restricted through the KA (Commercial Committee). To the question concerning the position of the Prokurists (Directors) in the KA, Dr.Kurt KUEPPER (OSTER Document 18, Exhibit 20, Volume I, Page 48) replied that the influence of the different members of the KA varied a great deal and that the assistants whom the managers of the Sales Combine consulted, only had an advisory function, whilst the final decisions were taken by the head of the Sales Combine. The members who only were consultants of the individual Sales Combine manager had only little influence and could be no means overrule their superiors.

The fact that Dr.KUGLER was the manager of the "Directorate Dyes", caused the Prosecution to contend that he was responsible for everything that happened in the "Directorate Dyes". For this purpose it refers to the document (NI 15239, Exhibit 2151) which was submitted by Dr.KUGLER during his cross-examination. It concerns Dr.PAECH's

report on the "Directorate Dye". In his examination Dr. KUGLER made the following statement with regard to this document (Transcript German Page 13183, Engl. Page 12836). The Farben management in Frankfurt in consideration of the demand of the Wehrmacht for men fit for military service asked Dr. PAECH to examine all departments of the Farben Head Office in Frankfurt whether the departments are under- or overstaffed. This inspection had no connection whatsoever with the question of the internal competencies and the limitation of responsibilities. Dr. KUGLER's statement is confirmed by the closing sentences of this document which were not contained in the excerpt submitted to the Court, but were read from the records. They read as follows: (Transcript German Page 13182, Engl. Page 12837):

"The staff decreased from 33 members before the war to 11 members".

"In accordance with the tasks to be performed and with the type of work, this department cannot be considered to be overstaffed and, in addition, carries out its tasks according to the staff available"

and Dr. Georg PAECH's affidavit, who also states that he was well acquainted with the fact that the members of the "Directorate Dye" were under the direct supervision of Herr von SCHNITLER, as far as individual problems were concerned (KUGLER Document 61, Exhibit 62 - Supplement -). The same is evident from the testimony of the witness SCHWAB (Transcript German Page 6190, Engl. Page 6134) who in reply to the Court's question with whom of Farben he had negotiated regarding the Polish dye factories, stated that he had negotiated with Dr. von SCHNITLER and his assistant Herr BOERT. Furthermore I am referring to Dr. KUGLER's cross-examination (Transcript German Page 13035, Engl. Page 12784) who answered in the negative the question whether in matters concerning Poland and Alsace Lorraine BOERT worked under his supervision or not.

It can be concluded from the task which the "Directorate Dye" as secretariate of the commercial Vorstand members of the Farbensparte had to perform, that the superiors are to be held responsible for the actions which were performed on their directives. Such an advisory activity had the result that the superior who got the advice and who had to examine it, was responsible for the measures which he took thereupon, regardless whether he made a decision which was in accordance with the advice or not.

Dr. KUEHLER's position in the "Directorate Dyes" can be compared with the position of a chief of staff of an army commander. May I refer in this connection to the Opinion of the judgment of the Military Tribunal V in the case WEICHES et al case VII. The defendants FOERTSCH and von GEITHNER who were acquitted in this case had only performed an advisory task which function in an industrial enterprise, would correspond with Dr. KUEHLER's position. I am referring to the reasons for the acquittal in these two cases (Transac. German Page 10377/78 and Page 10380, Session of 19 February 1948, English Pages 10498/99 and 10501/02).

Furthermore, I also refer to the decision of the Military Tribunal No. IV in the proceedings against FLICK et al., Case V, which declared the defendant FLICK guilty of plunder in matters of Rombacherkette. The defendants WEISS, BURKART and KALETSCH, who were his advisers, were however on 22 December 1947 acquitted for the following reasons:

WEISS, BURKART and KALETSCH had minor roles in this transaction. They were FLICK's salaried employees without capital interest in his enterprises. They furnished him with information and advice. But the decisions were his (FLICK)."

Dr. Kugler's position was not such that he had an insight into the business policy of Farben, as far as the dye-stuff was concerned. This can also be seen from the Kugler Document 3, exhibit 4, book I, page 13/14. The affiant Richard von SZILVINY stated that Dr. von Schmitzler first of all used to discuss important problems concerning matters beyond the dye-business with his colleagues from the Vorstand, but not with his subordinates, unless these questions concerned their sphere of work. Dr. Kugler belonged to the last group. This statement was confirmed by Dr. Kugler in his examination dealing with the Prosecution document (NI-11204, Exhibit 1015, Volume 43, page 237) in which he states that he could not judge about matters belonging to spheres outside the dye field.

From the situation, we described so far, we can conclude the following:

- 1.) Until 1934 Kugler exclusively dealt with the internal matters of the Secretariate of the Vorstand members of the Directorate Dyes, from which fact it can be concluded that he had no responsibility whatsoever for any business matters of Farben.
- 2.) From 1934 to the outbreak of the war, in addition to his main duties, Dr. Kugler also took over the management of the dye sales agency for the South-European countries, mentioned above. With the exception of general questions concerning the sales policy, Kugler's position was an independent one. He cannot be held responsible for any events occurring in other countries which were outside the dye sales business, since other sales-managers with equal rights, like Dr. OVERHOFF, SCHWAB etc, who were coordinated to him, were in charge of them. Questions concerning the general sales policy were decided by the Vorstand members, as for instance questions concerning the relations with political agencies, like the "Auslandorganisation" of the NSDAP (organization of Germans living abroad) (testimony OVERHOFF, transcript German page 5810, English page 5767).

3.) By becoming a member of the Kaufmannische Ausschuss (Commercial Committee) Dr. KUGLER's sphere of responsibility was extended, but not his responsibility towards the outside world, as he, as consultant of the Sales Combine manager was not authorized to make any decisions concerning the directives laid down for the Commercial Committee.

4.) As member of the "Directorate Dyes" he had no independent powers, but performed his tasks according to the directives of the Vorstand members who were superior to him. He had no influence in other fields of work, for instance in that of the employee BOKERT, since the latter directly worked under the management of the competent Vorstand member.

With regard to the charges which the Prosecution has made in this case, it is evident that in the years 1933 to 1939, Dr. KUGLER's position was not such as to give him such a degree of insight into the Farben's business which would have enabled him to give him a good picture of the single events, the sum of which is to prove his participation in the preparations of the war of aggression. This is true, on one hand, with regard to the general business policies of the Farben and on the other hand with regard to Farben's attitude to HITLER and the Party, (alliance with HITLER), with regard to Farben's relationship to the Wehrmacht (Vermittlungsstelle W) and to all the production matters of the Farben. Even assuming - which according to the situation is not possible - that he had such a high degree of insight, his position would not have given him the right to interfere with Farben's policies or to prevent any actions. As he can not be held responsible for the Farben's business policy, there is no possibility to find him guilty of crimes against peace, on account of this activity of Farben.

II.

Regarding Dr. KUGLER's position which I have described just now, I only have to examine these events in which he played an active role himself, as he only can be held responsible for these events. It mainly concerns his activity as sales manager where he could act independently. With regard to his position as sales manager for the Southeast European countries the following facts have to be considered:

1.) The Prosecution contends that Farben, through its Rumanian representative "ROMANIL" has supported the Fascistic organization "Iron Guard". Dr. KUGLER was in charge of the Romanil. In order to prove this contention, the Prosecution has submitted the document NI 1085, Exhibit 835, Book 46, Page 39. This document contains a correspondence of the Farben with the Foreign Office and cannot be considered as evidence for the alleged support, since the Farben only informs the Foreign Office that the Rumanians have reproached them for their support; these reproaches are however unjustified. The Prosecution has not submitted further evidence. In his examination, Transcript, German Page 12844, English Page 12572, Dr. KUGLER stated that the investigation has shown that these charges were unjustified and that the proceedings which were instituted against the Romanil by the Rumanian authorities, were suspended. This testimony is corroborated by Dr. Heinrich von ROEPAT's affidavit, DOCUMENT KUGLER 23, Exhibit 24, Book I, Page 57. Dr. von ROEPAT conducted the investigations in Rumania upon request of Farben. He states:

"I then found that this suspicion by the Rumanian authorities, namely that Farben has supported the 'Iron Guard', was in no way substantiated."

2.) The Prosecution claimed that Farben had made available to the Auslandsorganisation of the NSDAP and other agencies its foreign sales organizations for espionage purposes. It has submitted the Document NI 1294 (Dr. FRANK-FAHLE's statement) Exhibit 511, Book 26, Page 3 which only shows that, as far as Dr. KUGLER's field of work is concerned, the employee of the Jugoslavian representation, R. EGTING, held a position in the A.O. of the NSDAP. Dr. KUGLER stated to this subject in his examination (Transcript, German Page 12799/12800, English Page 12551, 52) that he was guided by the principle that he was in charge of a sales organization and not of a political organization and that he therefore requested Herr EGTING to make his choice whether he wanted to remain a business man or whether he wanted to become a politician. For the rest, it was impossible for him to exercise any influence on his subordinates' political views. Later on, EGTING had never played any active part in the A.O.

With regard to the special charge namely that KUGLER had furthered espionage activities, the Prosecution has not submitted any special documents which would prove that in the countries for which Dr. KUGLER was responsible as sales manager, anything happened which could be brought into connection with espionage. Herr Dr. KUGLER himself stated in his examination (Transcript, German Page 12839, English Page 12567) that in these countries nobody worked for the espionage with his knowledge or upon his request. In a more distant connection with this charge, the Prosecution has submitted the document NI 7115, Exhibit 817, Volume 46, Page 138 which deals with the taking over of the sponsorship for National Socialist editors. This letter only proves that Dr. KUGLER was not inclined to comply with the request of the political agencies to take over such sponsorships.

He raised considerable objections against such a procedure. No proof for the charges of the Prosecution can be inferred therefrom. In his personal examination - Transcript, German Page 12839, English Page 12667 - he explained this matter with the following words:

"It was just an attempt of the Party authorities to let men make a cheap trip abroad."

The Prosecution has not submitted any special evidence with regard to Dr. KUGLER's field of work which would corroborate the claim that the representations abroad worked according to National Socialist principles. In order to obviate the various charges against these representations, several documents regarding the employment of Jewish representatives abroad have been submitted (Documents KUGLER 11 - 19, Exhibits 12 - 20, Book I, Pages 32 - 50). The fact, that the representations which were under my mandator's control employed Jews until late into the war, is incompatible with the Prosecution's claim that the representations were germ cells of National Socialism. It can not be assumed that representations employing many Jewish assistants and officials would be the most suitable places to make propaganda for National Socialism.

The affidavit of the manager of the Czech Farbon representation TEFÄ, Karl SEERHORN, Document KUGLER 24, Exhibit 26, Book II, Page 1 gives us a clear picture of the position of the foreign representations in Dr. KUGLER's field of work in foreign countries, of the political difficulties and the general principles in this field. Furthermore we refer to the Documents KUGLER 25, Exhibit 27, Book II, Page 4 and Document KUGLER 26, Exhibit 28, Book II, Page 7.

3.) To prove the close relations of Farben to the Party and to the leadership of the Third Reich the Prosecution points out that Dr. Kugler was deputy chief of the sub-section (Fachgruppe) Aniline Dyes and Aniline Dyes Intermediate Products of the Economic Group Chemical Industry and a member of the Advisory Council (Beirat) for Export Questions of the Supervisory Office Chemistry (Prüfungsstelle Chemie). In his curriculum vitae, Document Kugler 1, Exhibit 1, Book I, page 1, he subsequently explained that this task had been assigned to him at the end of 1943 after his superior, Dr. von Schnitzler, had expressed his desire to be relieved of some of his work. It was then that he was given this office. His activities for the most part took place within the domain of his own firm as approximately 95% of the aniline dyes production was in the hands of Farben. During his interrogation, transcript German page 12801, Engl. page 12553, he stated that production questions were not a part of this activity. For these tasks Dr. STRUSE, the manager of the bureau of the Technical Committee, had been appointed.

As to the charge of having undermined the strength of potential enemies the Prosecution has introduced the transcripts of an interrogation of Dr. Kugler of 17 July 1945, NI 11304, Exh. 1615, Book 43, page 254, which transcript contains a statement to the effect that it had been the intention of German industry and thus also of Farben to strengthen the German Wehrmacht against all other countries.

The statements in this interrogation had been retracted in the mean time and had also been the subject of an objection which, however, was overruled. In his personal interrogation Dr. Kugler had stated — transcript German page 12833, Engl. page 12561 — that in his opinion such an attitude could not have prevailed among the Vorstand members within Farben's sales combine, since any warlike entanglement would destroy the thoughtfully built up structure of international collaboration and endanger any achievements of the last 20 years (transcript German page 12807, Engl. page 12560). As to the other Vorstand members he declared that he holds the same opinions.

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KUGLER

but that he never considered himself competent; not even in the summer of 1945, to render such a judgment, regarding which fact he had left no doubts, transcript German page 12533, Encl. page 12561.

As to the charges levelled against the defendant in connection with the report submitted to the Ministry of Economics concerning a reorganization of the European chemical industry, I may refer as to the basic questions to the statements made by the defense of VON SCHNITZLER in their closing brief.

In the interest of my client I content that it concerned an order of the Ministry of Economics to prepare a report (interrogation SCHLOTTERER, German page 5894-5905 *). NI-6842, Exhibit 1048, Book 51, page 128, NI 4897, Exhibit 1049, Book 51, page 130. In pursuance of this order the Commercial Committee, in which Dr. KUGLER participated only as a guest (NI 6293, Exhibit 818, Vol. 45, page 140) undertook to study this question and caused a report to be made. Dr. KUGLER occupied himself with this matter on orders of his superior (interrogation Dr. KUGLER transcript German page 12857, Encl. page 12584) in his capacity as a member of Farben's Direktionsabteilung. As to his personal views on and his inner attitude to this order and the manner he handled this work reference is herewith made to his interrogation (transcript German page 12858, Encl. page 12585, interrogation Dr. FRANKFURTH German page 2000, Encl. page 2011/12).

* Encl. page 5849 - 5859

Closing Brief-
PROSECUTION

The Prosecution in presenting their charges let it be known that they intend to have the conduct of Farben in 1938 at the annexation of the Sudetenland considered as a preparation to wage a war of aggression regardless of the fact whether the Court considers the events in 1938 as crimes against humanity or as war crimes. Since the Court now had decided that the events concerning the Sudetenland are not to be considered war crimes because they did not involve warlike occupation and that they are not to be considered crimes against humanity as the events in question took place before 1 September 1939, the conduct of Farben is now only to be examined under the viewpoint of a participation in the planning and preparation of a war of aggression.

The Prosecution has not introduced evidence to the effect that Farben had had a hand in the political developments leading up to the separation of the Sudetenland. These political events took place entirely without the participation of Farben.

The Prosecution contends merely that Farben had prepared itself carefully already in the spring of 1938 for the enforced union of the Sudetenland with Germany. (Trial Brief of the Prosecution, page 29). Exhibit 1072, NL-3961, Book 54, page 2, mentioned in this connection, merely shows that in April 1938 the defendant Haefliger had a discussion with Herr KEUTLER, an official of the Third Reich, on the probable position the governmental and Party agencies would take concerning a participation of Farben in the Prager Verein. The underlying cause for this unofficial and informative talk which took place during a lengthy conversation was a previously made offer to take shares of the Verein fuer chemische and metallurgische Produktion. There is nothing in this exhibit which would reveal an enforced union, allegedly carefully planned, just as little as the next exhibit of the Prosecution, Exh. 833, NL-6621, Volume 54, page 8.

It concerned here a discussion which was held on 17 May 1938 at the instance of Dr. FRANK FAHLE on the occasion of Herr SEIBGM's visit, who was head of Farben's dyestuff agency in Czechoslovakia. That some of the defendants took part in the discussion may be seen from the presence list and it is pointed out in this connection that during the trial it was made sufficiently clear that the "KUGLER" who was present at the discussions is not identical with the defendant KUGLER. A study of the transcript does not produce evidence in support of the facts contended by the Prosecution. In the main the subjects under discussion were questions pertaining to the organization of the agency, appointments, relation to banks and attorneys at law and considerable anxiety was expressed that Farben might be blamed by the Party instances because it had not yet coordinated its business conduct in Czechoslovakia to the principles of National-Socialism. The Verein für chemische und metallurgische Produktion in Prag was only mentioned toward the end of the discussion and only very little at that. Mention was only made of the fact that there had been personnel changes recently in the management of the Verein and that it would be interesting to find out what had become of the former German employees who had been replaced by Czechs. Any preparatory steps in support of the Prosecution's contention cannot be adduced from the transcript of the discussions.

One of the participants, the above-mentioned head of Farben's dyestuff agency, Herr SEIBGM, gave the following comment on this meeting (Document KUGLER 24, Exh. 26, Book II, page 1). He declared parts of the contents of the transcript as not agreeing with the facts. Apart from this he described the transcript "inflated and the work of an amateur". As for himself he declares that he had no knowledge of any preparatory steps on the part of Farben in regard to the acquisition of the Prager Verein's works and, moreover, that he had been taken completely by surprise.

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when he subsequently learned of the defendant KUGLER's appointment.

Another participant in this meeting, FRANK FAHLE, has also been interrogated as witness for the prosecution. Transcript German page 2016-27, Encl. page 2027 and following. The statements of FRANK FAHLE bear out the critical comments of Herr SHERCH to the meeting.

That no great importance was attached to this meeting may be seen from the transcript of the meeting held by the Commercial Committee on 24 May 1938 in which the above meeting was discussed. This meeting did not close with any directive or resolutions concerning any kind of activity in Czechoslovakia. Also in the following meeting of the Commercial Committee of 16 June 1938, there were no concrete plans discussed or resolutions passed to initiate any kind of measures. No mention was made at all concerning the Czechoslovakian situation in the next meeting of 9 September 1938. A remark to this effect occurs again in the transcript on the meeting held by the Commercial Committee on 17 October 1938 which took place after the signing of the Munich Agreement. That the preparatory steps proposed by the Prosecution had not been taken may be seen from the statements of the defendant KUGLER, transcript German page 12697, Encl. page 12647.

To be in position to make quick decisions the Vorstand finally decided in its meeting of 16 September 1938 (NL-1508⁰, Exh. 2131) to charge 4 Vorstand members to study the questions which might arise from possible territorial changes. Concrete measures were not discussed at that time, which also may be seen from the letter of the defendant KUEHNE of 23/9/38, Exhibit 1044, NL-3721, Volume 51, page 116, which shows that Farben was genuinely surprised by the appointment of Farben executives as commissioners. Apart from this Dr. KUEHNE

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in his personal interrogation describes in detail the attitude of the Prager Verein in this connection (transcript German page 10303, Engl. pages 10168/69).

On 23 September 1938, a week before the Munich Agreement was signed, Farben then suggested to the Reich Ministry of Economics to appoint 2 commissioners for the works Aussig and Falkenau, in case territorial changes would render this necessary.

The interest shown by the von Hayden firm, with which the Farben subsequently made common cause in this respect, already had resulted in the spring of 1938 in discussions with agencies of the German Wehrmacht, as may be seen from the Pros. Doc. NL-9161, Exhibit 1106, Book 54, Engl. page 13.

The affiant SEEBACH (Doc. KUGLER 24, Exhibit 26, Book II, page 1) states that the Hermann Goerring Werke had already made their interest known.

At this time other firms had already entered into negotiations with the Prager Verein. From the testimonies of the Pros. witnesses Carl Friedrich MUELLER and DYORACEK may be seen that the Prager Verein and the Ruetgers-Werke had entered into negotiations for the purpose of affiliating the works Aussig and Falkenau with the Ruetgers works or, as was said by Dyoracek, to sell them the works *) (transcript page 3449). They must have taken place before the Munich Agreement had been signed because according to the statements of Dyoracek the executives of the Verein did not go to Aussig anymore after this time (transcript German page 3515/16, German page 3497/98). This shows that the Verein had reckoned with the annexation of the Sudetenland and that they were themselves of the opinion that they could no longer manage the Aussig and Falkenau works from Prague. Although the interest/parties were actuated by diverse motives it must be said that

*) (NL 9632, Exhibit 1123, Vol. 54, page 167) As may be seen from the statements of MUELLER these negotiations were initiated in Aussig.

the sober observers of the political situation for the most part concurred in their opinion in regard to the Aussig and Falkenau works.

In his personal interrogation the defendant gave the following reasons which he thinks induced Farben to interest itself in the works (transcript German page 12869, Engl. page 12596): He stated Farben would not have shown interest for the two works of the Verein, if it had not been for the fact that dyestuff was being produced in their plants. Agreements were entertained to the effect that the cartel agreements with the Trager Verein concerning the market would be seriously endangered by the appearance of an outsider. It was particularly suspected that the factories might be acquired by circles close to the Fuehrer of the Sudeten Germans, H E I L E I N (transcript German page 12876, Engl. page 12626). That the interest of Farben was indeed mainly centered on the dyestuff plants of the Verein in Aussig/Falkenau may be seen from the Pros. Doc. NL-4016, Exhibit 1107, Volume 54, page 39, in connection with the statements of the defendant HUGLER, transcript German page 12876, Engl. page 12627.

Another important fact in this connection is that Farben began to show interest only after public opinion of the whole world had occupied itself with the Sudeten German question and at a time a solution of the population problem began to take shape in the direction of an autonomy for, or a complete separation of, the Sudetenland.

The evidence does not contain proof to the effect that Farben had planned the separation of the Sudetenland by force (page 29 of the Prosecution's trial brief) but that Farben had no connections whatsoever with political events, that Farben took its "preliminary steps" only at a time when other firms had already appeared on the scene as serious competitors.

Therefore one cannot seriously maintain that Farben had participated in any preliminary actions. The documents rather show that the political events preceded Farben's economic measures.

If it had been the intention of the Prosecution to adjudge this business conduct of Farben in the light of subsequent events as a preparation for the war of aggression which was initiated in 1939 they should have furnished proof that the Aussig and Falkenau works had been acquired to further the ultimate objective of a war of aggression, namely for instance to convert the output of the works to products serving the purposes of a war of aggression. The Prosecution was not able to furnish proof to this effect. During the cross examinations they only introduced a document of the defendant KUGLER in support of this point (NL-15077, Exhibit 2182), which shows that after a visit by state representatives he, as the commissioner of the works, had reported to the Reich Ministry of Economics, which was his employer, that the governmental agencies expected him to include several war important products in his production program. In this connection KUGLER had stated during his personal interrogation (transcript German page 13182 and following, Encl. page 12838) that this was an order issued by a governmental agency for which Farben was not responsible, thus confirming again the contents of the letter. Apart from this, the orders had not been carried out since they were considered to be unreasonable from an economic viewpoint. No proof has been furnished to the effect that after Farben had acquired the works, the plants were subsequently converted by the von Heyden firm to the manufacture of militarily important products. (transcript German page 12906, Encl. page 12558).

Quite apart from the fact that the participation in the preparation for a war of aggression has not been proved so far it is furthermore to be said

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that there is not the slightest evidence that the defendants had knowledge of the fact that Hitler's plans in regard to the Sudetenland involved the preparation for a war of aggression. The following facts prove that in regard to the events which took place in the fall of 1938 in Czechoslovakia the defendants generally could not have been aware of the fact that it concerned a criminal invasion.

The Prosecution has stated that the annexation of the Sudetenland has been designated by the IMT as a criminal act. In connection with the criminal intent this statement is of little importance. This does not imply criticism on the verdict of the IMT. In 1945 the IMT was in position to pass judgment on events which took place 8 years previously. It could draw its conclusions from the events of 1939 and subsequent developments. It had access to pertinent material to draw its conclusions from the events of 1938. This material was not available to the contemporaries. In order to be in position to pass judgment on the contemporaries who took a hand in the events of 1938 in this way or other than only such developments may be considered as were known to people living at that time. It was not generally obvious to people living in 1938 that the events taking place in the Sudetenland were a part of Hitler's criminal plans. The IMT did not say either, that the events of that time must be considered individually as criminal acts and that they were openly recognizable as such. Therefore it is an extraordinarily important factor for arriving at a verdict to consider how the events presented itself to the contemporaries living in Germany at that time.

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That the Sudeten German problem was not an imagination but a real ethical problem which had existed ever since the Czechoslovakian state had been founded is an established fact which from among other things, may be seen also from the report which Lord RUNCIMAN had submitted on 21 September 1938 to the English Prime Minister Chamberlain, Doc. KUGLER 29, Exhibit 30, Book II, page 17. How the situation was looked at in the summer of 1938 may be seen from the reports of the Czech diplomatic representative to the Czech Foreign Ministry, Doc. KUGLER 28, Exhibit 29, Book II, page 9.

On 29 September 1938 the agreement between the 4 great powers England, France, Italy and Germany was signed in Munich. This agreement represented a solution of the burning ethical problems. The defendants, who had no special knowledge concerning Hitler's plans, cannot be charged with having known that Hitler did not intend to keep the agreement. The contemporaries could very well be of the opinion and may hold these views even today, that the English and French statesmen who had signed the agreement were not aware of it either. If the Prosecution is of the opinion that the defendants possessed better information they should have proved this. The Prosecution has not furnished this proof.

III.

In Count III of the Indictment the Prosecution has charged the defendants with having violated the provisions of the Hague Rules for Land Warfare and the provisions of Control Council Law No.10 by committing acts of spoliation during the war in the occupied countries. Of the cases submitted to the Court in the indictment the Farbensparte of Farben is involved only in the following:

1. Poland
2. Alsace-Lorraine
3. France (Francoeur)

Other cases of spoliation do not come under consideration simply for the reason that they do not concern the Farben sales combine of which Dr. Kugler was a member and his competences were not such as to allow him to influence or decide the activities of other Farben agencies. As to his participation in the above-mentioned events the following is to be pointed out:

1. Poland

The Prosecution has introduced no document from which it may be seen that Dr. KUGLER had taken an active part in the matter of the Polish dye factories. His name does not appear in any of the documents. During the cross-examination of the defendant Macfliger, Exh. 2003 NI 2969 has been introduced which is a report of a member of the VPO (Farben's political economic policy department) in Berlin, addressed to Dr. KUGLER. The report contained information concerning a conversation with the official of the Ministry of Economics, Hoffmann. Quite apart from the fact that this letter does not allow the conclusion to be drawn that KUGLER had occupied himself with the matter of the Polish dye factories.

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Dr. KUGLER in his personal interrogation gives a credible explanation to the effect that it had happened quite often that letters were addressed to the Direktionssekretariat of the sales combine, if the senders did not know the proper person handling the matter (transcript German page 12952, Encl. page 12669). The Prosecution has introduced Doc. III 15239, Exhibit 2151 during the cross-examination. It concerns a report of Dr. PADCH, which has been dealt with already in this closing brief on page 3. Reference is respectfully made to the statements there. In any case proof has been furnished by the testimony of the witness SCHWAB, transcript German page 6190, Encl. page 6134, particularly in connection with the affidavit of Dr. GEORG PADCH, Doc. KUGLER 51, Exhibit 52, Supplement to Book I, that the statements of Dr. KUGLER during the cross-examination agreed with the fact that the member of the Direktionsabteilung, SCHEIT, was not subordinated to him for matters concerning Poland and Alsace-Lorraine, transcript German page 13035, Encl. page 12784.

2. Alsace-Lorraine.

Since the Prosecution was not able to produce documents in the matter Muehlhausen in which the name of Dr. KUGLER appears and as they were not able to prove in any other way his participation in the transactions there, rebuttal evidence in this respect is not necessary.

3. France (Francolor)

It is not necessary within the scope of this closing brief in the interest of Dr. KUGLER to go into the details of the Francolor transaction, as this transaction will be thoroughly

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KUGLER

dealt with in the closing brief for the defense of VON SCHNITZLER.

Concerning the participation of Dr. KUGLER the Prosecution has submitted the Exhibits 1241, NI 5939, Volume 57, page 31, 1242, NI 792, Volume 57, page 49. An objection has been raised against the first mentioned exhibit (transcript German page 2794, Encl. page 2797). This document is a report concerning a trip of several Farbon executives to Paris in the fall of 1940. Dr. KUGLER also took part in this trip. The report is not signed and does not contain any other references as to his origin. An affidavit of Dr. KUGLER, included in the Proc. Vol. No. 57 under NI 10685 for the purpose of identifying this report, has not been introduced by the Prosecution. Considerable doubts concerning the authenticity of this report exist, which are well-founded for the reason that the prosecution was not able to obtain an identification by the alleged author, Dr. TERHAAR, although the latter was detained as a witness in the Nuremberg jail during the first six months of this trial. Other doubts against this report result from the fact that according to the statement of Dr. GROBEL, who was on this trip, transcript German page 12073, Encl. page 11055/6, the participants on this trip did not conduct the negotiation jointly, therefore the report of Terhaar must be considered as being partly based on hearsay only. The doubts entertained by Dr. KUGLER concerning the authenticity of the document regardless of Exhibit 1242, NI 792, Volume 57, page 49, may be obtained from his interrogation (transcript German page 12966, Encl. page 12603).

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Since the participants on this trip had only negotiated with German agencies in France, these negotiations do not furnish proof that pressure was being brought to bear on any French governmental agencies. No proof has been furnished either that these negotiations had repercussions on the Francolor transactions. Apart from this there is no reason to assume that Farben Vorstand members who — as may be seen from subsequent documents — had themselves conducted the negotiations in the Francolor transaction, would have chosen one of their subordinates to establish the first contacts.

In the direct negotiations with the French partners of the Francolor transactions Dr. KUGLER never acted independently but only in company with his superior Vorstand members, Herr VON SCHMITZLER and Herr TER MEER, and partly in common with 3 other Farben executives, namely KULATZ, BOCHERT and LEAVER (NI 6949, Exhibit 1259, Volume 59, page 1, NI 6950, Exhibit 1263, Volume 59, page 11, NI 6737, Exhibit 1246, Volume 57, page 77).

Dr. KUGLER himself stated during his interrogation (transcript German page 12955, Engl. page 12671-2, and German page 12961, Engl. page 12677) that he had participated in the negotiations in his capacity as head of Farben's Direktionsabteilung and that he had the same functions for the commercial sector as Dr. SEUSS had for the technical sector and Dr. KUNTER for the legal sector. He furthermore stated that it was not up to him to render any decisions, but that in the final analysis the responsibilities for decisions rested with the Vorstand members, which agrees with the statements of the defendant Dr. TER MEER, NI 6735, Exhibit 1257, Volume 59, page 123. In this document, an affidavit, Herr TER MEER stated: "The entire Francolor negotiations were conducted by Herr VON SCHMITZLER and myself".

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KUGLER

Moreover, Dr. KUGLER did not carry on negotiations concerning the transaction with the Ministry of Economics (transcript German page 12956, Encl. page 12674). Proof that he had acted independently or that he had carried on negotiations independently has not been furnished by the Prosecution. It cannot be seen from any documents of the Prosecution either on what parts of the negotiations or on what parts of the contract work he perhaps had exerted direct influence.

In view of the fact that Dr. KUGLER had participated in the negotiations only as an expert and in consideration of the above basic statements concerning his responsibility as member of Farben's Direktionsabteilung conclusive proof has not been furnished as to his active participation in this transaction or as to his responsibility for it. In addition I should like to refer to the fact that Dr. KUGLER, as may be seen from NI 6000, Exhibit 1256, Volume 59, page 59, which contains the statutes of the corporation, subsequently was not a member of Francolor's Aufsichtsrat. Rather, he was a member ^{of} the Comité Commercial, which was attached to the Conseil d'Administration as an advisory organ (transcript German page 12961, Encl. page 12677). This fact reveals his position in this connection.

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We hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of Closing Brief Kugler.

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J. Weismann
ETO No. 35 270

Pages 11 - 28

G. Launer
ETO No. 20 123

Buenos Aires, 18 June 1948

Tim Burt, LUTHERSCHAFT
(Burt)

Case 6
Defense

Trial Brief

for the Defendant Carl Ludwig LAUTENSCHLAGER

submitted

to the Military Tribunal No. VI, Nurnberg

by Dr. Hans PRIBILLA
Attorney-at-law

Long



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3. Shipments of typhus vaccine to the concentration camp Buchenwald ("free of charge": No. 21, suspicious that only 30 dosages were shipped for tests; No. 21, "boxes and packages"; No. 22 "Camouflage"; No. 23, Experimental series I; No. 24, prosecution exhibit 2259; No. 25)

4. Information to the Behring Werke concerning the results of the comparative typhus vaccine tests

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(Report Mrugowsky's of 5 May 1942, No. 26, DIETSCH: "very disappointed"; No. 27)

5. Incorrect presentations and argumentations in the trial brief of the prosecution, part III. No. 119-122

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(Farten does not inquire about the results within two months after delivery; No. 28, inspection of the production work of the Behringwerke No. 29, "wanting", nevertheless more tests are urgently wanted; No. 30 Kogan reports; No. 31.)

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- c) Dr. DING's elimination as a
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- aa) Proof for his elimination
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of 11 July 1944 to Hoechst;
No. 60; Dr. Kogon's book
"The SS State": No. 60) 59-60 41-43
- bb) Untenable argumentation of the
prosecution in its trial brief
part III, No. 135 61-67 43-47
- (experimental series 24 April
1943: No. 61; Dr. Weber to
Professor Dieling on 19 April
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favor: No. 62, 63; Dr. Ding
and Dr. Bruggowsky: No. 64-67
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indicating that tests were made
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- e) Other documents in the time after Dr.
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To Count 5 of the Indictment
Common Plan and Conspiracy

1. In the Vorstand and Technical Committee Professor Lautenschlager represented only his special fields of work	100	65-66
2. The members of the Vorstand had only a general idea of the fields of work of their colleagues	101	67
3. The same goes for the members of the Technical Committee	102	67

LAUTENSCHLAGER

(Born at Karlsruhe, Baden, on 27 Febr. 1888)

1. 1. Professional and scientific career:
(NI-8004, Exhibit 307, Document Book 84, English page 8,9,
German page 13, 15)

1910 final examination as a pharmacist;

1912 final examination from the graduate school of engineering,
examination of the Chemists' Association;

1913 Doctor's degree in chemistry (Dr. Ing.);

1919 Medical State Board and Doctor's degree in medicine (M.D.);
Polytechnical Institute in Karlsruhe: venia legendi for
pharmaceutical chemistry;
director of the pharmaceutical institute of the university
of Greifswald;

1920 received the title of professor; joined the dye works at
Hoechst

1921 received license as a physician;
professor at the university of Frankfurt;

1936 director of the plant at Hoechst and of the plant combining
Hoechstwerke.

2. 2. Professional work.

Professor Lautenschlager had a life of untiring industry
in the service of science. Numerous world-renowned drugs were
discovered and developed under his direction. The number of
scientific papers registered at the Hoechst plant concerning
the drugs developed under his direction amounts to many thousand.

(Lau Document 1, Exhibit 17, Document Book I, English page 1,
and following, German page 1 and following)

(Lau Document 2, Exhibit 18, Document Book I, English page 6,
German page 6).

The University of Marburg awarded ^{him} the diploma of an honorary
senator "in recognition of his scientific work in the field of
chemistry and pharmacology as well as of the generous promotion
of chemo-therapeutical research".

(Lau Document 68, Exhibit No. 391, Document Book V,
English page 8, German page 11.)

TRIAL BRIEF LAUTENSCHLAGER

3. 3. His professional ethics;

Professor Lautenschlager¹ is extremely conscientious and has a high moral opinion of his profession:

He was a real scholar who devoted his life completely to his work.

(Transcript 2; March, 1948, English page 9966, German page 10102)
(Lau Document 14, Exhibit No. 29, Document Book I, English page 37, German page 37)
(Lau Document 17, Exhibit No. 32, Document Book I, English page 45, German page 45).

He is the prototype of a conscientious scholar full of the highest ideals.

(Lau Document 3, Exhibit No. 19, Document Book I, English page 9, German page 9).

He is a man with an open mind for the world, with noble principles and a great sense of responsibility.

(Lau Document No. 5, Exhibit No. 21, Document Book I, English page 13, German page 13 fig. 2)
(Lau Document No. 7, Exhibit No. 23, Document Book I, English page 18, German page 18).

He shows a definite sense of responsibility towards man and beast.

(Lau Document 1, Exhibit No. 17, Document Book I, English page 4, German page 4).

He always proved a very great sense of responsibility and a strong sense of duty.

(Lau Document 9, Exhibit No. 25, Document Book I, English page 23, German page 23.)

His conscientiousness as a physician is exemplary.

(Transcript of 8 April 1948, English page 10839, German page 11026).

His conscientiousness was almost exaggerated.

(Lau Document 51, Exhibit 54, Document Book III, English page 60, German page 60).

His moral attitude towards his profession was to serve and to help people. The idea that one could commit a crime against the health or the life of a fellow human or permit the commission of such a crime was completely beyond his imagination.

(Lau Document 11, Exhibit No. 27, Document Book I, English page 28, German page 28, figure 4).

Trials-Grief LAUTENSCHLAGER

4. 4. His attitude towards religion and his attitude towards racial problems, especially his attitude towards Jews.

Professor LAUTENSCHLAGER served mankind regardless of religion and race. He is a man with deep religious convictions.

(Lau document 11, exhibit 27, document book I, English page 27, German page 27).

Evidence for his friendly and helpful attitude towards Jews:

(Lau document 5, exhibit 21, document book I, English page 13/14, German page 13/14, fig. 4)

(Lau document 6, exhibit 22, document book I, English page 15, German page 15)

(Lau document 7, exhibit 23, document book I, English page 17, German page 17)

(Lau document 8, exhibit 24, document book I, English page 20, German page 20)

(Lau document 9, exhibit 25, document book I, English page 22, German page 22)

(Lau document 10, exhibit 26, document book I, English page 25, German page 25)

(HOERLEIN document 4, exhibit 97, document book V, English pages 29 and 35, German pages 29 and 35).

5. 5. He was not interested in politics, he was not a national socialist.

Professor LAUTENSCHLAGER was not interested in politics.

(Lau document 9, exhibit 25, document book I, English page 22, German page 22).

For him research was a world to which the other spheres of civilization especially the world of politics had no access.

(Lau document 1, exhibit 17, document book I, English page 3, German page 3).

He joined the NSDAP in 1938 in connection with his appointment as business manager of the Hoechst plant, because he was urged to do so by the Gauleiter. The problem was to prevent that a man who would only listen to the orders of the Party was made business manager, which fact would have been detrimental to the plant and the employees. Professor LAUTENSCHLAGER did not hold any rank or

office in the Party.

(NI 8004, exhibit 307, document book 84, English page 11, German page 17).

There are numerous examples proving that Professor LAUTENSCHLAGER was not a national socialist either in his mind or in his actions:

(Lau document 4, exhibit 20, document book I, English page 11, German page 11)
(Lau document 5, exhibit 21, document book I, English page 15, German page 13, fig. 3)
(Lau document 9, exhibit 25, document book I, English page 22, German page 22)
(Lau document 11, exhibit 27, document book I, English page 27, German page 27, fig. 2)
(Lau document 13, exhibit 28, document book I, English page 33, German page 33)
(Lau document 15, exhibit 31, document book I, English page 43, German page 43, fig. 3)
(Lau document 19, exhibit 34, document book I, English page 48, German page 48)
(Lau document 20, exhibit 35, document book I, English page 49, German page 49).

6. 6. Leader of the Armament Industry.

The title of a leader of the armament industry which was bestowed on him in 1942 was not a political honor. It was conferred on him in recognition of his research work in the pharmaceutical field. There was no obligation attached to the bestowing of this title. Neither the Hoechst plant nor the other plants of the plant combine Maingauwerke received any special support or any rewards from the Party.

(NI 8004, exhibit 307, document book 84, English page 11/12, German page 18, fig. 8 and 7, last paragraph).

To Count 1 of the Indictment.

Preparation of a War of Aggression.

7. 1. Opposition against methods of violence especially war.

Professor LAUTENSCHLAGER opposed the violent methods of the Nazis and opposed war. He was far from imagining in advance the outbreak of the second world war.

(Lau document 4, exhibit 20, document book I, English page 11, German page 11)
(Lau document 15, exhibit 30, document book I, English page 39, German page 39, fig. 1)

(Lau document 21, exhibit 36, document book I, English page 51, German page 51)
(Lau document 22, exhibit 37, document book I, English page 53, German page 53)
(Lau document 23, exhibit 38, document book I, English page 55, German page 55),

8. 2. Air raid protection, mobilization plans, production.

The defendant JAEHNE was Professor LAUTENSCHLAGER's deputy in the management of the Hoechst plant and the plant combine Maingauwerke. With regard to this fact my presentation of evidence for the defendant JAEHNE deals with all charges of the prosecution against the plant management of Hoechst in the field of alleged preparations for the war (air raid protection, mobilization plans and production). Everything connected with this point is contained in my presentation of evidence to count 1 of the indictment, paragraph II c) and d) and paragraph III, pages 16-24 of my trial brief for JAEHNE, to which I am referring herewith.

9. 3. Professor LAUTENSCHLAGER's incorrect statements concerning the production at Hoechst.

Professor LAUTENSCHLAGER's statement that about 10% of the production of the Hoechst plant was exclusively for armament purposes,

(NI 6415, exhibit 1351, document book 69, English page 119, German page 150)

is objectively incorrect. I am referring to the presentation of evidence in the trial brief JAEHNE to count 1 of the indictment, paragraph III, pages 19 and following.

To Count 2 of the Indictment.

Plunder and Spoliation.

10. 1. All charges against Hoechst and the Maingauwerke are unfounded.

In as far as the Hoechst plant and the other Maingauwerke are included in this count of the indictment, I am also referring to the presentation of evidence in the trial brief for JAEHNE to count 2 of the indictment, pages 28 and following.

Trial-Brief LAUTENSCHLAGER

11. 2. Professor LAUTENSCHLAGER had nothing to do with the DAG
Pressburg.

According to prosecution document

NI 9289, exhibit 1096, document book 53, English page 63,
German page 89

the commercial committee accepted on 11 November 1938 the following
resolution of the South East Europe Committee:

"In agreement with Budapest the following are to be newly
elected to the Verwaltungsrat:

... and Professor Dr. LAUTENSCHLAGER".

With regard to this statement Dr. KUBINS, who was a member of the
Verwaltungsrat of the DAG Pressburg declared that Professor
LAUTENSCHLAGER's name got into these minutes by mistake, because
as a physician Professor LAUTENSCHLAGER had nothing to do with
Pressburg. Nobody ever thought of electing Professor LAUTENSCHLAGER
into the Verwaltungsrat.

(Transcript of 31 March 1948, English page 10226, German page
10362/3).

To Count 3 of the Indictment.

Slavery and Mass Murder.

- A. Employment of foreign workers and prisoners of war at the Hoechst
plant and at the Maingauwerke.

12. 1. Treatment of the foreign workers and prisoners of war.

The trial brief for JAEGER contains a detailed presentation
of evidence concerning the treatment of foreign workers and
prisoners of war at the Hoechst plant and at the Maingauwerke. I
am referring to this brief to the full extent.

(Trial brief JAEGER to count 2 of the indictment, paragraph II,
German pages 40-84)

13. Furthermore I refer to the various testimonies of witnesses explaining Professor LAUTENSCHLAGER's attitude towards the problem of foreign workers and prisoners of war. Professor LAUTENSCHLAGER felt personally responsible for the welfare of the foreign workers and prisoners of war; many suggestions for the improvement of their fate originated with him.

(Transcript of 2 February 1948, English page 9964 and 9968, German page 10061 and 10104)
 (Lau document 11, exhibit 27, document book I, English page 28, German page 20)
 (Lau document 13, exhibit 28, document book I, English page 33, German page 33)
 (Lau document 14, exhibit 29, document book I, English page 35, German page 35)
 (Lau document 15, exhibit 30, document book I, English page 39/40, German page 39/40, fig. 2)
 (Lau document 16, exhibit 31, document book I, English page 41-43, German page 41-43)
 (Lau document 17, exhibit 32, document book I, English page 45, German page 45)
 (Lau document 37, exhibit 40, document book III, English page 7/8, German page 7/8)

14. 2. Incorrect statements of Professor LAUTENSCHLAGER in his affidavit of 26 March 1947.

Professor LAUTENSCHLAGER declared in his affidavit of 26 March 1947

(NI 6415, exhibit 1358, document book 69, English page 114, German page 115, fig. 3)

that he and director JAEHNE were positively inclined towards the suggestion to employ foreign workers at Hoechst.

With regard to this statement Director JAEHNE testified the following in the witness stand: The authorities had assigned to Hoechst a production quota which, the plant was not able to fulfill on account of the numerous inductions into military service. This caused complaints on the part of the authorities. When the news were passed that Hoechst was going to receive some foreign workers, it looked as if the situation with regard to the production might somehow ease up which fact was most welcome.

(Transcript 24 March 1948, English page 9934, German page 10070) Professor LAUTENSCHLAGER's statement must under no circumstances

be interpreted as if at that time he intended

to exploit the foreign workers who were expected to come.

15. In the affidavit which I just mentioned Professor LAUTENSCHLAGER stated, referring to allegedly large armament production of the Hoechst plant, that the prisoners of war were employed in that armament production in violation of international obligations.

(NI 6415, exhibit 1358, document book 69, English page 119/20, German page 150, No. 35).

Since the statement about the armament production of Hoechst and of the Maingauwerke is incorrect (see running number 9) it was not possible that prisoners of war were employed there contrary to regulations. For this reason Professor LAUTENSCHLAGER's statement is irrelevant.

B. Medical Experiments.

I. Marburg Working Circle.

16. 1. Epidemic of dysentery at the concentration camp Buchenwald at the turn of the year 1939/40.

The prosecution submitted document

NI 12176, exhibit 1603, document book 84, English page 25-28, German page 36-42

"in order to prove that the initiative for trying out the products in the concentration camps originated at the Behring Werke of Farben and that, in 1940, the Behring Werke were aware of the fact that Buchenwald was a concentration camp and that prisoners were to be used for the experiments".

(Transcript 24 November 1947, English page 4236/7, German page 4265/66).

This argumentation is incorrect.

The witness Dr. DEBITEZ stated:

- a) At the turn of the year 1939/40 the Behring Werke sent some dysentery vaccine to the concentration camp Buchenwald

in order to combat an epidemic of dysentery which had broken out there.

b) It was a vaccine which was used everywhere and also a new vaccine which had, however, already been tested;

c) this means that the vaccine was not tried out at the concentration camp Buchenwald but was practically applied.

d) A blood test is not a "test" in the technical sense of the word but is made in order to establish the protective effect of the vaccination. The same process is used whenever an enclosed circle of persons can be examined with subsequent serological examination;

e) the request of the camp physician to treat the material of figures as secret and confidential was based on the wish not to let the public know anything about infectious diseases. Secrecy is customary in all cases of epidemics;

(transcript of 8 April 1948, English page 10831-34)

17. 2. Conference at the Reich Ministry for the Interior in Berlin on 29 December 1941.

The prosecution claims that the Buchenwald experiments with typhus vaccine of the Behring Werke were initiated at the conference at the Reich Ministry for the Interior on 29 December 1941. It claims the following:

a) Dr. DECHT had to do an "advertising-job" on the vaccine deriving from chicken eggs of the Behring Werke;

b) Germany proper was free of typhus to a great extent;

c) a "plan for the experiments was arranged with Dr. HIRSHENSKY".

d) Dr. DECHT supposedly wanted to prepare the vaccine in the present form and in double strength for this experiment

and was supposed to contact Dr. MROGUSKY,

(trial brief of the prosecution, part III, No. 109),

Contrary to this I want to state:

at a) The everyday usage of the word "advertising" is the pointing out of special advantages. Dr. LEHNITZ did not do that. He was convinced that the lice vaccine was the best vaccine against typhus,

(transcript 8 April 1948, English page 10803, German page 10951/52)

It was the scientific duty of the Behring Werke to include the egg vaccine into the comparative investigations,

(transcript 8 April 1948, English page 10804, German page 10952)
(transcript 8 April 1948, English page 10848, German page 11037),

Besides, the small quantities that were produced were prohibitive to any advertising.

(Iau document 25, exhibit 3, document book II, English page 8, German page 8)

(Iau document 26, exhibit 4, document book II, English page 10, German page 10)

at b) Germany proper was not free of typhus and there were no indications that there were no cases of typhus at the concentration camp Buchenwald and its vicinity,

(transcript 8 April 1948, English page 10804/5, German page 10953).

"There have been outbreaks of typhus in various parts of the Reich due to the increased employment of Soviet-Russian prisoners of war in the Reich as well as through Wehrmacht members on furlough or on change of station".

(NI 12181, exhibit 1606, document book 84, English page 33, German page 47/8)

"... that Germany, even Alsace Lorraine has cases of typhus to a certain extent".

(NI 12183, exhibit 1607, document book 84, English page 39, German page 60)

at c) The Behring Werke had arranged no plans with Dr. HERSCOWSKY with regard to the vaccine tests. On the other hand Dr. HERSCOWSKY and Professor GILBRECHTER discussed a plan for the testing of vaccines at the beginning of December 1941.

(Lau document 54, exhibit 5, document book IV, English page 11, German page 11)

"At Ministerialrat Dr. DIETTER's suggestion it was furthermore decided that in the large-scale experiment arranged between the Robert-KUCH-Institute and the Hygienist of the SS, Dr. HERSCOWSKY, both WEIGL's and the Behring Werke vaccine should also be used".

(NI 12181, exhibit 1606, document book 84, English page 35, German page 52)

Dr. DEHNITZ reports on the information received from Ministerialrat Dr. DIETTER: "A plan for experiments was arranged with Dr. HERSCOWSKY".

(NI 12183, exhibit 1607, document book 84, English page 38, German page 58)
(transcript 8 April 1948, English page 10805, German page 10953)

"Nobody talked about experiments during the meeting of 29 December 1941.

(transcript 8 April 1948, English page 10806, German page 10954)

At this meeting the representatives of the Behring Werke did not suspect that the comparative experiments with typhus vaccines were to be carried/in an illegal manner,

(transcript 8 April 1948, English page 10806/72, German page 10955/6)

"From the document"

(NI 12181, exhibit 1060, document book 84, English page 33, German page 47 - ZAHN's report)

"any objective expert can draw only one conclusion, namely that clinical tests or medical trials were intended, and no experiments".

(Professor HUSELAIN during the cross examination of the prosecution: transcript 4 February 1948, English page 6423/4, German page 6482)

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Concerning the conception of "experiment" and "trial":

Professor BUTENANT: transcript 2 February 1948, English page 6179, German page 6235,

Professor HOLZER: Ica document 50, exhibit 52, document book III, English page 54, German page 54,

Dr. KUENIG: BOEGER document 74, exhibit 69, document book III, English page 60, German page 60.

at d) The delivery of the vaccine in two different strengths is necessary from the view point of vaccine techniques. The vaccine "in double strength" is still nine times weaker than the typhus vaccine of the Robert-Koch-Institute, which was also included in the comparative trials;

(transcript 8 April 1948, English page 10806, German page 10955)

Dr. DESNITZ did not contact Dr. KRUGOWSKI. It was not necessary, because the vaccines were required via telephone from the Hygienic Institute of the Witten 83 at Berlin for the comparative test of typhus vaccines;

(transcript 8 April 1948, English page 10808, German page 10957)
(Ica document 54, exhibit 5, document book IV, English page 12, German page 12, fig. 5)

18. The claim of the prosecution that the typhus vaccines were "unknown and untried" is incorrect.

(Trial brief, part III, No. 102)

Dr. DESNITZ had tried them out on himself. They had already been tried out on animals and human beings in many places.

(Transcript 8 April 1948, English page 10812, German page 10962)
(NI 12183, exhibit 1607, document book 84, English page 36, German page 54)
(NI 12181, exhibit 1606, document book 84, English page 35, German page 51).

19. The claim of the prosecution that as early as at the meeting of 29 December 1941 at the Reich Ministry for the Interior Dr. DESNITZ promised to provide vaccines for the concentration camp Buchenwald.

(Trial brief, part III, No. 111)

It was not discussed during this meeting where the test was to be made. Dr. HERSHITZ' note on the meeting reads: "I only want to state, i.e. in Harburg, when dictating this memorandum ..." that we intend to provide the vaccine for this test".

(NI 12183, exhibit 1607, document book 84, English page 56, German page 58)
(transcript page 8 April 1948, English page 10809, German page 10958).

The shipment to Dachauwald was effected pursuant to a directive by telephone from Berlin:

(transcript page 8 April 1948, English page 10807/8, German page 10957)
(transcript 8 April 1948, English page 10810, German page 10960).

20. 3. Shipments of typhus vaccine to the concentration camp Dachauwald.

It was nothing unusual that the concentration camp Dachauwald needed typhus vaccines, since cases of typhus had occurred all over the Reich territory. Dr. WINKELSKY and the Hygienic Institute of the Waffen SS were in charge of disposing of the vaccine. Neither can any damage be done with vaccines,

(transcript 8 April 1948, English page 10811, German page 10960).

21. Incorrect is the claim of the prosecution with regard to document

NI 10255, exhibit 1609, document book 84, English page 41, German page 61,

which is to prove that the Dohring Werke knew about the criminal intentions since they

- a) provided the vaccine free of charge
- b) provided only 50 dosages of vaccine for the comparative tests.

Answer:

at a): Vaccines used for test purpose were generally not charged for,

(transcript 8 April 1948, English page 10812, German page 10961)

At the meeting at the Reich Ministry for the Interior on 29 December 1941 Dr. ZAHN explained already, that the Behring Werke were giving the vaccine for test purposes free of charge.

(NI 13580, exhibit 1851, page 1, submitted during the cross examination of HOENLEIN on 4 February 1948).

Until 20 May 1942 the Behring Werke had delivered the typhus vaccine according to the Cox method free of charge for the inoculation of 200 - 250 000 people.

(Lau document 27, exhibit 6, document book II, English page 13, German page 13)

at b): The application of the Harburg typhus vaccine through Professor KUDIGKE was the way vaccines were ordinarily applied and no comparison could be made with other vaccines with regard to the effect of the vaccination,

(transcript 8 April 1948, English page 10849/50, German page 11040).

22. "The first boxes and packages in which typhus vaccines were sent (spring of 1942)... to the concentration camp Dachauwald"

(prosecution affiant Dr. HUVEN: NI 12182, exhibit 1611, document book 34, English page 64, German page 93, fig. 2)

were not shipments from the Behring Werke. The Behring Werke sent only one shipment each to

Dr. HUVEN, Dachauwald, on 14 January 1942,
Dr. HUGOWSKY, Berlin, on 2 February 1942,
Dr. LING, Berlin, on 3 February 1942,

(transcript 8 April 1948, English page 10819 and 10830, German page 10969 and 11015)

(Lau document 28, exhibit 10, document book II, English page 15, German page 15).

According to the small packages submitted in evidence

(Lau document 67, exhibit 16, transcript 8 April 1948, English page 10820, German page 10971)

these vaccines could easily be packed in a carton of the size of a shoe box.

As can be seen from the entries in the DING diary, Dr. DING received typhus vaccines also from other sources, e.g. from the Pasteur Institute at Paris,

the Hygiene Institute of the university of Zurich
the Serum Institute of the university of Riga,
the Anhalt Serum Institute at Dessau,
the State Serum Institute at Copenhagen.

(N. 265, exhibit 1608, document book 84, English page 45, 54, 57c, 57h, German page 65, 73, 79, 83).

The Anhalt Serum Institute of Dessau, which manufactures the vaccine Acid is a competitor of the Behring Werke and has nothing to do with the Behring Werke and IG Farben.

(transcript 8 April 1948, English page 10824/25, German page 10776).

23. Against the claim of the prosecution that Dr. DING had arranged with IG Farben to "camouflage" the real recipient of the vaccines

(prosecution affiant Dr. HAVEN, NI 12182, exhibit 1611, document book 84, English page 64, German page 94, fig. 3)

witness Dr. DEHITZ declares that the three shipments of vaccine (mentioned in the previous number 22) were openly addressed and that nobody at the Behring Werke had arranged for a camouflaged address.

(Transcript 8 April 1948, English page 10821/22, German page 10972)

(See document 28, exhibit 10, document book II, English page 20, German page 20).

Dr. HAVEN's statement that he as an outsider signed the correspondence upon directives of Dr. DING, in order to camouflage it

(NI 12182, exhibit 1611, document book 84, English page 64, German page 94, fig. 3)

indicates that Dr. DING was deceiving the Behring Werke.

24. The typhus vaccine experimentation series I mentioned in the Ding diary of 1 February 1942

(NO-265, exhibit 1608, document book 34, English page 34, German page 63)

was most likely carried through with the vaccine which the Behring-Werke had sent to Dr. ROSEN at Buchenwald on 14 January 1942 (See No. 22 above)

(transcript 8 April 1948, English page 10812, German page 10962).

With regard to the use of the shipment sent on 3 February 1942 to Dr. BING in Berlin, and with regard to the use of the vaccine sent to Dr. HUGO/SKY on 2 February 1942, no indications can be found in the BING diary.

(transcript 8 April 1948, English page 10821, German pages 10971/72)

25. The document introduced by the prosecution on 10 May 1948

BT-13589, exhibit 2259

deals with the two shipments of vaccines of

14 January 1942 to Dr. ROSEN and
2 February 1942 to Dr. HUGO/SKY.

(See above number 22)

Dr. BENNITZ referred to the contents of this document in his testimony as a witness.

(transcript 8 April 1948, English page 10810, German page 10960)

26. 4. Information to the Behring Werke concerning the results of the comparative typhus vaccine tests.

The Behring Werke received no information about those vaccinated persons who were afterwards artificially infected.

(transcript 8 April 1948, English page 10013, German page 10963)

Dr. HUGO/SKY's report of 5 May 1942 concerning the result of the comparative typhus vaccine tests received by the Behring Werke

(See document 7, exhibit 8, document book V, English page 4,

German page 7)

gave no reason for any such assumptions

(transcript 8 April 1948, English page 10814, German page 10964).

Upon order of his superior, GRUNWITZ, Dr. BERGOWSKY had changed Dr. DING's report on the result of the test ^{such} in a way that the manufacturers of the vaccine should not know about the later artificial infection.

(Lau document 54, exh. 5, doc. book IV, English page 13/14
German page 13/14)

(Lau document 70, exh. 7, doc. book V, English page 2 ("Page 5104")
German page 5 ("Page 5168"))

27. Dr. BERGOWSKY's report of 5 May 1942 was the only report on the comparative typhus vaccine test, which was received by the Behring Werke.

(Transcript 8 April 1948, English page 10817 and 10822
German page 10966 and 10973)

(Lau Document 54, exh. 5, document book IV, English page 10
German page 10 fig. 4)

This report reveals that Dr. DING's story related by the prosecution affiant DIETZSCH, according to which Parson was most disappointed about the comparative assessment of success achieved by the various vaccines,

(HI-12184, exh. 1630, doc. book 84, English page 69
German page 100, fig. 7)

has no foundation whatsoever. On the contrary, Dr. GRUNWITZ was satisfied with the result.

(transcript 8 April 1948, English page 10822, German page 10973)

28. 5. Incorrect presentations and arguments in the trial brief of the prosecution, part III, No. 119-122.

The prosecution failed to furnish proof for its claim, stated in its trial brief, part III, No. 121 that the Behring Werke supposedly inquired about the results of the experiments within two months after the preparations had been delivered to Suchowald. The claim is also incorrect.

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29. The argumentation of the prosecution in trial brief Part III, No.120 is unclear,

First of all Ministerialrat BIEBER's note is quoted incorrectly. It does not read: "The vaccine ... shall be checked for its effectiveness in an experiment", but: "The vaccine now manufactured by the Behring Werke ... shall be tested for its effectiveness in an experiment".

(NO-1115, exh.129, doc.book 84, English page 32, German page 46, paragraph b)

It is, however, important that the part of the document quoted by the prosecution

NO-1429, exh.1632, doc.book 84, English page 73, German page 117 constituted only the opinion of Ministerialrat BIEBER. On 17 April 1942, the date of the document, no result of the test of the typhus vaccine had been received. Dr. HERMANN GIEB's report of 9 May 1942 summarizes as follows:

"The extent of the protectiveness to be obtained (from vaccine made from chicken eggs) depends on the method used in the manufacture of the vaccine".

(See document 71, exhibit 8, English page 7, German page 10)

The participants in the inspection of the Behring Werke which took place on 4 May 1942 came to the same result.

(Doc.Hoorloin 115, exh.114, doc.book VI, English page 34, German page 34)

(Transcript 8 April 1942, English page 10846, German page 11635)

It was most necessary to increase the production of this vaccine in case the effectiveness of the typhus vaccine made from chicken eggs proved satisfactory in order to remedy a dangerous shortage in typhus vaccine. This can be seen from the fact that a trained expert can produce in one day vaccine from lice sufficient only for at the most 10 people, whereas he can produce a daily amount of vaccine from chicken eggs for approximately 15,000 people.

(transcript 8 April 1948, English page 10804, German page 10952)

In view of this situation I cannot recognize anything illegal in the documents quoted by the prosecution.

30. The prosecution begins No.121 of its trial brief, part III, with the following sentence:

"The Farben product (meaning the typhus vaccine made from chicken eggs of the Behring Werke) had been tested and found wanting".

Dr. BRUGOWSKI's report of 5 May 1942 states that the vaccine was not found wanting:

"Immunization against typhus can thus doubtless be obtained by means of a vaccine, produced according to the chicken egg process which, in its immunization effect is equal to the vaccine after WEIGL"

(Ism document 71, exhibit 8, document book V, English page 7)

The fact that the Behring Werke are still delivering this same vaccine made from chicken eggs until this day and that 90% of it is going to American official authorities is a proof that the vaccine is good.

(Transcript 8 April 1948, English page 10822/23, German page 10973)

After having claimed that the vaccine is wanting, the prosecution continues:

"Thereafter Farben continued to insist on further experiments with their faulty product".

It wants to prove its statement with the documents:

WI 10176, exhibit 1633, document book 84, English page 75,
German page 119 and
WI 10175, exhibit 1634, document book 84, English page 77,
German page 122.

However, these documents do not contain anything about vaccine made from chicken eggs, but speak about a typhus absorbent vaccine.

This vaccine is used against typhoid plus Paratyphus, plus cholera.

(transcript 8 April 1948, English page 10829, German page 10981)

It was not used for vaccination in the concentration camp, but was given to soldiers of the Waffen SS in Berlin

(Lau document 54, exhibit 5, document book IV, English page 15,
German page 15)

31. Dr. DING's medical clerk, Dr. KOGON, declared under oath that he made detailed reports on every patient on whom experiments were made. The Behring Werke in Marburg were among those listed on the distribution list.

Dr. KOGON said verbally:

"All copies of the reports on these cases were sent to Dr. ZEIGOWSKI for distribution."

(No. 281, exh. 1631, document book 84, English page 72, German page 113)

Dr. ZEIGOWSKI testified that the Behring Werke never received any such case histories on experimental persons.

(Transcript 8 April 1948, English page 10829, German page 10981)

In two places of its trial brief the prosecution states incorrectly:

in part III, No. 119, that KOGON sent these charts to Farber and

in part III, No. 122, that the detailed reports, charts etc. "were sent to Farber in the ordinary course".

The prosecution's conclusion drawn in figure 119, "that anyone receiving these charts could not help but know that the experiments involved artificial infection"

is correct in regard to the recipients of these reports, i.e. also Dr. BRUGOVSKY. The Behring Werke, however, did not receive these reports, but only Dr. BRUGOVSKY's harmless looking report. (see above No.26).

The letter of Dr. DESSITE of 15 September 1942, quoted by the prosecution in figure 122 of its trial brief is the document on typhus absorbent vaccine mentioned in the foregoing No.30 of my trial brief.

32. 6. Professor BIELING's meeting with Dr. DING in May 1942.

Professor BIELING met Dr. DING in May 1942 at the Hygiene Institute of the Waffen SS at Berlin. At that time Professor BIELING was a high-ranking physician of the Wehrmacht.

(See document 24, exhibit 9, document book II, English page 1,
German page 2, fig. 2)

and had nothing to do with the Behring Werke.

(Transcript 8 April 1948, English page 10817, German page 10967)

Dr. DING told him about his experiments with typhus vaccine, but not about the fact that these experiments were carried out on unwilling prisoners of the concentration camp. Professor BIELING declared:

"I do not know if the test patients came forward voluntarily."

(NI-3500, exhibit 2269, Figure 5; submitted by the prosecution
on 17 May 1948)

and:

"Without any doubt, I took it for granted that these experiments were carried out in the same manner as the experiments made in foreign countries. I never thought that the experiments could have been made differently, that is in a criminal manner. Details which would have been contrary to this opinion were not mentioned in my professional discussions with Dr. DING."

(See document 24, exhibit 9, document book II, English page 3,
German page 3)

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Soon after the discussion with Dr. DING Professor BIELING wrote a letter to the Behring Werke at Marburg. In this connection Professor BIELING states:

"After my conference with Dr. DING I wrote a letter to Dr. DEHITZ in which I reported on my meeting with Dr. DING and told him, too, that tests on human beings were being carried out without really much point".

(NI-8500, exhibit 2269, figure 5, last paragraph; submitted by the prosecution on 13 May 1948)

and:

"Because of the fact that ... I did not think that the testing methods of Dr. DING were professionally justified, I wrote a letter to Marburg, right after my discussion with Dr. DING, pointing out the inadequacies of Dr. DING's testing methods."

(Lau document 2), exhibit 9, document book II, English page 4
German page 4, figure 5)

Dr. DEHITZ also states that the letter did not contain any hints to illegal tests, but only emphasized Dr. DING's scientific inadequacy:

"I gathered from BIELING's statement that the tester or testers had drawn scientifically improper conclusions from the tests. The idea of inadmissible experiments could not occur to me, because a few days before that I received the circular letter of Dr. BRUGMANN about the results of the tests which stated expressly that the protective effect of the vaccine had been tested in a typhus epidemic."

(Transcript 8 April 1948, English page 10317/18, German page 10967)

During the meeting of Dr. DEHITZ with Professor BIELING in August 1942 Professor BIELING

did not report anything about artificial infection.

(Transcript 8 April 1948, English page 10852, German page 11042/43)

I want to point out expressly that the typhus vaccine tests planned on 29 December 1941 at the meeting of the Reich Ministry of the Interior had already been completed, when Professor BIELING met Dr. DING and that Dr. DEWITZ was already in possession of the final report of Dr. DRUGOWSKY.

(Transcript 8 April 1948, English page 10817, German page 10966)

After the 3 February 1942 neither Dr. DING nor Dr. HOVEN received any typhus vaccines from the Behring Works (see above No. 2)

33. 7. Experimental series No. V with typhus vaccines.

According to the entry in the DING diary the vaccine "EIN" of the Behring Works was used for the typhus vaccine test series V which was carried through during the time of 1 December 1942 to 20 December 1942.

(NO 265, exhibit 1508, document book 84, English page 48, German page 44)
Dr. DEWITZ never heard anything about this test. If this entry is assumed to be correct Dr. DING may have received this vaccine directly through the normal commercial way from a pharmacy office, which operated in all larger cities.

(Transcript 8 April 1948, English page 10818/19, German page 10968/69)

He may also have ordered it from the main medical depot of the Waffen SS at Berlin-Lichtenberg, the central office for the medical supplies of the Waffen SS and the concentration camps. Already at the end of 1941 a small supply of typhus vaccines of diverse origin was kept there.

(Law document 54, exhibit 5, document book IV, English page 13,
German page 13)

According to the entry in the DING diary the manufacturers were informed that this experimental series had negative results, since the controls could not be infected properly"

(NO-265, exhibit 1608, document book 24, English page 50 German page 69)

Such information was never received by the Behring Werke.

(transcript 8 April 1948, English page 10819, German page 10969)

34. 3. Tests with yellow fever vaccine.

Dr. DEHNITZ gave detailed statements with regard to the yellow fever tests mentioned in the DING diary, which were carried through during the time of 13 January 1943 to 17 May 1943 with vaccines of various manufacturers, among them also of the Behring Werke in Marburg.

(NO-265, exhibit 1608, document book 24, English page 50-52,
German page 70/71)

The main points of view are: On 29 December 1942 the Army Medical Inspectorate of Berlin stated over the telephone that the manufacture of yellow fever vaccine was urgent, and that every batch of yellow fever vaccine had to be tested on human beings before mass applications. The Behring Werke suggested that these tests should be carried out on the employees of the Behring Werke. The Army Medical Inspectorate, however, demanded that the vaccines should first undergo long transportation so that the reliability and quality of the package after transportation might also

be tested and therefore it would be tested by the Hygiene Institute of the Waffen SS, at Weimar. Instruction was given to send the vaccine samples there. Messengers of the Behring Werke brought the samples to the Weimar station; there members of the Waffen SS took them over.

The Behring Werke did not know that the tests were to be performed on concentration camp inmates. The Behring Werke assumed that the inoculations were to be carried out on members of the Wehrmacht who were to be sent out to Africa shortly. The test records received with an accompanying letter from the Hygiene Institute

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of the Waffen SS from Weimar-Buchenwald did not say anything either about concentration camp inmates, since the records merely contained the initials and the age of the person vaccinated and temperature and indications about urine and blood tests.

The tests with yellow fever vaccine is just as harmless as the small pox inoculation.

(Transcript 2 April 1948, English page 10823/24, German page 10974/76)

35. The connection between the "Hygiene Institute of the Waffen SS Weimar-Buchenwald" and the concentration camp of Buchenwald did not become known to Dr. DEWITZ and the Behring Works until after the war when Kogon's book "The SS State" was published.

(transcript 8 April 1948, English page 10827, German page 10978)

For the sake of clarity I want to repeat the address to which the typhus vaccine was sent on 14 January 1942:

"Herr SS Obersturmführer HOFER, camp physician,
concentration camp Buchenwald near Weimar".

(NI 10255, exhibit 1609, document book 84, English page 41, German page

The Army Medical Inspectorate addressed the typhus vaccine to

"Hygiene Institute of the Waffen SS, Weimar-Buchenwald".

36. 9. High test immunization with Frankel vaccine.

Dr. DEWITZ also furnished detailed information with regard to the "high test immunization experiment with Frankel vaccine" which was carried through during the period of 8 November 1943 to 17 January 1944.

(NO-265, exhibit 1608, document book 84, English page 574, o,
German page 80)

Their main contents are as follows: The Behring Works had invented a vaccine which immunized against gangrene infections endangering human lives. The German Army Medical

Inspectorate asked for a shipment of this gangrene vaccine for the Main medical storeroom. The Hygiene Institute of the Waffen SS in Weimar must have received the vaccine from there, because in October 1943, the Hygiene Institute asked the Behring Werke for instructions about the vaccination plan, and later on also demanded gangrene vaccines. Here, too, blood tests were made. The correspondence again did not reveal that the persons inoculated were prisoners. One could assume that members of the SS or of the Wehrmacht, of the Labor Service, the Organization Todt or some other labor details were used. The entry in the DING diary reveals that this Frankel vaccine was used for a perfectly correct vaccination against gangrene.

(Transcript 8 April 1948, English page 10825-28, German page 10976-79)

(Law document 54, exhibit 5, document book IV, English page 16-17, German page 16-17 fig. 9)

37. With regard to the fact that the connection between the Hygiene Institute of the Waffen SS of Weimar-Buchenswald and the concentration camp Buchenswald as well as the different addressees were not known I want to refer to the previous number 35.

38. The rebuttal document

NI-10275, exhibit 2232, document book 94, English page 19, German page 19 does not reveal that the Behring Werke knew about the fact that the immunization tests were carried through on concentration camp inmates. In this document the Behring Werke are comparing "underfed people" with "well fed people". They mention expressly that during the active immunization against dysentery (Shiga-Kruso) experience showed that the results of the immunization of people who were insufficiently fed were not favorable. This immunization had not been carried through in a concentration camp. It is not especially necessary to prove that in January, the general status

of nutrition in Germany was "insufficient". The Behring Werke mentioned this general fact in their letter.

39. 10. Typhus vaccine Experimental Series IV.

The Typhus vaccine experimental series of 27 October 1942 to 8 November 1942 mentioned in the DING diary was allegedly carried through with the vaccine won from the intestines of lice of the Behring Institute at Loebber.

(NO-265, exhibit 1608, document book 84, English page 47, German page 66)

This typhus vaccine was one of the best known at that time. The Behring Werke at Marburg knew nothing of this shipment of typhus vaccine, because the Behring Institute of Loebber carried through the experimental tests with its vaccines on its own responsibility.

(Transcript 8 April 1948, English page 10828, German page 10980)

(Iau document 33, exh.12, doc.book II, English page 29, German page 29, fig. 2 and 4)

40. 11. Protective vaccination of prisoners of war and Eastern workers at Marburg in the summer of 1944.

To prosecution document

NI 12251, exhibit 1690, document book 86, English page 76, German page 8

In summer 1944 an epidemic of paratyphoid had broken out at the prisoner-of-war camp of the Behring Werke and in the camp in the vicinity of Marburg. The responsible Stalag ordered the protective vaccination of all prisoners-of-war against typhus, and paratyphoid. The Behring Werke carried through the vaccination.

(Iau document 29, exh.13, doc.book II, English page 21, German page 21,

For reasons of expediency the Eastern workers of the Behring Werke were also vaccinated with their consent and without any coercion. Vaccine from the current production was used for the vaccination, which was manufactured at the Behring Werke for the Wehrmacht. During the entire course of the war there were never any complaints about this vaccine.

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(Lau document 30, exh.14, doc.book II, English page 22/23 German page 22/23)

In January 1945 the chief of the Wehrmacht Medical Department informed the Behring Werke that in future the Wehrmacht could accept only typhoid and paratyphoid vaccines which had first been tested on human beings. Since the prisoners of war and the Eastern workers had been vaccinated with these vaccines, the Behring Werke were justified in referring to this previous vaccination, which represented also a test.

Nothing illegal was done in this case either.

(Lau document 31, exh.15, doc.book II, English page 24/25, German page 24/25)

II. Hoechst Werk Circle

1. Invention of the vaccine from the nevidine series.

Al. a) animal experiments.

During the years 1941/42 typhus had spread not only at the front, but also among the civilian population so that this disease had to be considered a grave danger to the lives of many people from the hygienic as well as from the medical point of view.

(doc. HOEHLER 21, exh.62, doc.book III, English page 113, German page 113)

(Further: the references under No.17, to b) of this trial brief)

It was the supreme duty of the scholars to seek a remedy against this danger. It would have been irresponsible to neglect this duty. This also goes for the research departments of the large pharmaceutical industrial firms. Because of their equipment, their means and their qualified employees they were

the first ones to be called upon to develop new means for the fight against typhus.

(Transcr. 2 Feb 1943, English page 6183, German page 6241)

The chemo-therapeutical laboratory of Hoechst, headed by Dr. FUSSENGER also devoted its effort to this task. After having made a great number of experiments with animals Dr. FUSSENGER found the chemo-therapeutics of the ceridine series 3582 and its arsenic acid salt, Balcanol, proved to be the best agents in influencing the typhus infection of mice.

(Lau doc. 59, exh. 62, doc. book IV, English page 54, German page 52, fig. 4)

(Lau doc. 58, exh. 61, doc. book IV, English page 34, German page 32, fig. 7)

Only 8,1% of the mice which were not treated survived the disease, whereas 52% of the mice treated with that preparation 3582 survived the disease.

(Lau doc. 39, exh. 52, doc. book III, English page 20, German page 20)

42. b) Correct tests on diseased human beings. -- Experiments on the tester - clinical tests. "Directives (Merkblatt) - results of the therapy. As soon as the results of animal tests justify the assumption that a preparation might have a healing influence on human diseases, clinical tests are being made. In the clinical tests of a new pharmaceutical the finding of its compatibility is - in addition to ascertaining its therapeutical value - of the greatest importance, as is also the establishment of the best form of tolerance;

(Lau doc. 51, exh. 54, doc. book III, English page 51, German page 58, fig. 4)

There would be no chemical therapeutical progress for humanity, if one wanted to bar a drug, the valuable pharmacological properties of which have been recognized in animal experiments, from being tried on human beings only

for the reason that it shows some negligible secondary effects, such as eczema (drug-exanthema), indigestion etc.

(Lau document 16, exhibit 63, document book I, English page 66/67
German page 66/67, fig. 3)

Many world renown drugs show such disagreeable s.e. effects when applied. Nevertheless they remain an indispensable drug for the physician, because the curative results far outweigh the drawbacks.

(Lau document 51, exh. 54, doc. book III, English page 58/59, German page 58/59, fig. 4)

43. The clinical tests help to gather experience so that after necessary improvements in the production or the application to patients have been made the new drug is ready to be sold commercially. Even now series of old and well-known drugs must first undergo preliminary tests on a few patients in order to establish the compatibility and possible secondary effects. This goes, e.g. for Salvarsan.

(Lau doc. 38, exh. 41 doc. book III, English page 10, German page 10)

44. Between 1940-1945 about 50 newly developed remedies of the Hoechst laboratories were being tried out at the same time in clinics.

(Lau document 58, exhibit 61, doc. book IV, English page 31, German 31, fig. 6)

One of these remedies was the nitro acridine preparation 3502 in its various forms of application. After the Hoechst laboratory had made its own tests

(Lau doc. 58, exh. 61, doc. book IV, English page 33, German page 33, fig. 1)

(Lau doc. 60, exh. 63, doc. book IV, English page 67, German page 67, fig. 1)

it was given to the clinics to be tested on patients suffering from typhus. It had already been used for a long time and with good results in the treatment of other infectious diseases.

(Lau doc. 58, exh. 61, doc. book IV, English page 32, German page 32, fig. 8)

(Lau doc. 59, exh. 62, doc. book IV, English page 51, German page 51, fig. 3)

(Lau doc. 60, exh. 63, doc. book IV, English page 66, German page 66, fig. 2)

The first typhus patients to be treated with nitro ceridine preparation 3582 were patients of the medical clinic of the Frankfurt hospital. The good results justified more clinical tests on a broad basis.

(Lau doc. 59, exh. 62, doc. book IV, English page 53, German page 53, fig. 4)
Hoechst sent the preparation to numerous clinics to be tried on patients suffering from typhus.

(NI-12246, exh. 1673, doc. book 86, English page 86, German page 12)

(Lau doc. 58, exh. 61, doc. book IV, English page 35, German page 35, fig. 1)

45. Together with the preparation to be tested the testers were given directives ("Anleitung") drawn up at Hoechst, which contained an exact description of the structure of the preparation and of the results of animal experiments and gave instructions for the application to human beings. It described the experiences in the application to patients suffering from typhus and other diseases.

(Lau doc., exh. 42, doc. book III, English page 12 and following, German page 1 and following)

A physician who conscientiously adhered to these directives could not harm his patients.

(Lau doc. 51, exh. 54, doc. book III, English page 57, German page 57, fig. 2)

(Lau doc. 50, exh. 53, doc. book III, English page 53, German page 53)

(Lau doc. 52, exh. 55, doc. book III, English page 62/63, German page 62/63)

46. The testers furnished oral and written reports on their experiences.

(Lau doc. 58, exh. 61, doc. book IV, English page 32, German page 32, fig. 9)

HOECHST made best use of these reports in order to perfectiate the effectiveness and tolerability of the ³¹preparation.

(Lau doc. 58, exh. 61, doc. book IV, English page 34, German page 34, fig. 11)

There are at Hochst numerous reports on the curative successes with patients suffering from typhus despite some disagreeable secondary effects. I have introduced some of them in the form of affidavits.

(See document 40-48, exhibit 43-51, document book III, English page 21-49, German page 21-49)

The Viennese doctor Professor HOLLER reports in a medical treatise:

"We have formed the impression that we have now a remedy in hand particularly in the shape of nitro ceridine 3582 - by which we are able to master even serious cases of the disease, if it is applied in the proper way."

(See document 49, exhibit 52, document book III, English page 51, German page 51, fig 5)

During the years 1943 and 1944 Professor HOLLER saved the lives of about 1800 soldiers suffering from typhus by "testing" this preparation.

They all were especially serious cases. One of the physicians in his department stated:

"The vomitings are unpleasant because they strain too much the blood circulation. But if I feel sick with typhus I would take the remedy without reserve."

(See document 43, exhibit 46, document book III, English page 27 and 31, German page 27 and 34)

67. 2. The collaboration of the Neurological Clinic of the Frankfurt University of Dr. KRUEDIGER, Dr. DIME and Dr. VETTER as testers of the typhus remedy 3582.

Through document

NI 12247, exhibit 1674, document book 86, English page 9 and following, German page 13 and following

the prosecution tries to prove that Ferber purposely tried out its new preparation on unwell human beings.

Professor LERLIN-VACIUS, however, states that preparation 3582 was used with full success at the Neurological Clinic of the University of Frankfurt in cases of acute psychic disturbances, which means that the application was not an experiment but the clinical use of a remedy which has already been

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recognized as harmless with regard to its curative effects and tolerability.

(Lau document 59, exhibit 56, document book V, English page 10-12, German page 13-15)

(Lau document 58, exhibit 61, document book IV, English page 33, German page 33, fig. 10)

Under certain circumstances there could even be considerable objections against the physician's informing a sick person about the therapy he is going to use, because the favorable effects of a remedy might be impaired by psychological reactions on the side of the patient.

(Professor BUTELARDE: Transcript 2 February, 1948, English page 6181,

German page 6259)

(Dr. MEH: Lau document 51, exhibit 52, document book III, English page 58, German page 58, fig. 3)

48. From the many files found in Hoochst concerning the testing of nitro veridines the prosecution submitted a selection from the correspondence, which, studied by itself, gives the impression as if Dr. BRUDOWSKY, Dr. MEH and Dr. VETTER were the only testers selected by Hoochst. The prosecution argued that the reason was that those testers were to carry through the tests on concentration camp inmates without their consent.

(trial brief of the prosecution, Part III, 30.94)

49. Lau document 53, exhibit 57, document book IV, English page 1, German page 1

Lau document 54, exhibit 5, document book IV, English page 6, German page 6, fig. 2

Lau document 58, exhibit 61, document book IV, English page 35, German page 35, fig. 15

show how Dr. BRUDOWSKY was asked to test the nitro veridines on typhus patients. Dr. VETTER supplied Dr. BRUDOWSKY with the preparation so that he would always have some if he needed it for his troops in the field

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and in the army hospitals at home. Dr. DRUGOWSKY made an excellent impression on Dr. WEBER as a knowledgeable scientist and a responsible physician. The Hygiene Office in Berlin described him to Dr. WEBER as a serious scientist and "the best man in the SS Medical Corps."

(Leu document 58, exhibit 61, document book IV, English page 36/37
German page 36/37, file 15)

Dr. DRUGOWSKY had the preparation administered in the contagious wards of the SS hospitals in Berlin, Prague and Greece to typhus patients.

(Leu document 51, exhibit 5, document book IV, English page 8,
German page 8, file 8)

3. Dr. DING.

50. a) The time until his visit at Hoochst on 14 April 1943.

Dr. WEBER happened to meet Dr. DING in the middle of February 1943.

He was introduced to Dr. WEBER as a qualified physician from the staff of the Medical Head Quarters of the Waffen SS at Berlin. Dr.

DING explained that he had been asked by Dr. DRUGOWSKY to take charge of the testing of the Hoochst typhus preparations.

He talked about patients whom he was to treat at the front and about soldiers who had become ill while on leave whom he had to visit. For

this reason it was not at all conspicuous, that Dr. DING asked to have the experimental preparations for him sent to Dr. HORN, thearrison physician of the Waffen SS at Weimar.

(Leu document 58, exhibit 61, document book IV, English page 37/38,
German page 37/38, file 17-19, and English page 45/46, German page 45/46, file 33)

(NI 9713, exhibit 1852, document book 85, English page 59, German page 63)

Dr. WEBER was under the impression that Dr. DING was a colleague of Dr. DRUGOWSKY at the staff of the Hygiene Institute of the Waffen SS at Berlin.

(Leu document 58, exhibit 61, as above)

51. The fact that the concentration camp of Buchenwald asked Hoechst in March 1941 whether Hoechst would be willing to exchange vaccines in stock at the camp, because their time of effectiveness had expired

(NI 12179, exhibit 1604, document book 84, English page 29, German page 43)

is being used by the prosecution as a proof that Hoechst knew that the nitro veridine preparation 3583 was tested at the concentration camp of Buchenwald.

(transcript 24 November 1948, English page 4237, German page 4256)

In reply to this I want to point out the following:

a) On an average during 1941 to 1944 the outgoing mail of the Hoechst plant amounted annually to approximately 240,000 individual items, including approximately 6,000 letters of the pharmaceutical scientific department and approximately 1600 shipments of medical supplies. This means that the plant management could not know all customers. Besides, requests for exchanges were always forwarded to the subordinate officials for disposal.

(See document 51, exhibit 56, document book IV, English page 71, German page 71, fig 3 and 4)

b) The document submitted by the prosecution has the title "Concentration camp Buchenwald, camp physician." The typhus preparations were, however, sent to

"Herrn SS Hauptsturmführer Dr. HOVEN,arrison physician of the "Stoffen SS, "Bismar"

this address had been given to Dr. "FBI" by Dr. DIRM.

(NI 9713, exhibit 1652, document book 85, English page 39, German page 63)

(See document 58, exhibit 61, document book IV, English page 45, German page 45, fig 33)

and, as explained by the prosecution official Dr. HOVEN was meant as a means of camouflage in order to conceal the actual recipient.

(NI 12182, exhibit 1611, document book 84, English page 64, German page 94, fig 3).

Even if Hoechst had known that the preparation

was meant to test concentration camp inmates suffering from typhus, it could not have refused to ship the preparation. Hoechst would have acted in an irresponsible way, because the "testing" of the preparation was, at the same time also an attempt to cure the disease.

(transcript 2 February 1948, English page 6188/89,
German page 6239)

(see also above, No. 46)

52. Dr. KRUMHOLTZ and Dr. DING received the same instructions as the other testers of the preparation. They too, also received directives on the nitro veridine preparation together with the test quantities,

(NI 9701, exhibit 1638, document book 85, English page 6,
German page 7, fig. 4)

(NI 9713, exhibit 1652, document book 85, English page 59,
German page 63)

and were asked to report on their experiences.

(NI 9580, exhibit 1643, document book 85, English page 14,
German page 16)

Dr. REBER instructed Dr. DING on occasion of a telephone conversation of 25 March 1943

(NI 9727, exhibit 1654, document book 85, English page 63,
German page 65)

which Dr. DING had required by wire

(Leu document 55, exhibit 58, document book IV, English page 24,
German page 24)

(NI 9730, exhibit 1657, document book 85, English page 57,
German Page 69, paragraph 2)

that if persons suffering from typhus would be treated with
lots
preparation 3582 at a very early stage the results would be more favorable

(Leu document 58, exhibit 61, document book IV, English page 38,
German page 38, fig. 20)

(Leu document 59, exhibit 62, document book IV, English page 53,
German page 53, fig. 6)

(Leu document 63, exhibit 65, document book IV, English page 78,
German page 78).

The statement of the prosecution witness DIEZEL, explains that during the first days of the illness no symptoms of typhus can be detected refutes the contents of the testimonies of the three witnesses testifying on the question of early treatment of typhus.

(NI 12184, exhibit 1630, document book 84, English page 71,
German page 103, fig. 11)

53. The claim of the prosecution in trial brief part III, figure 128, referring to the just mentioned prosecution document

NI 9727, exhibit 1651, document book 85, English page 62,
German page 65;

namely that Dr. DING personally informed the IG that the experiments with the preparation were a failure is also incorrect. Dr. LAUFENBERGER's note in the files only proves that there was no exchange of experience and advice was given to Dr. DING.

54. Prosecution document 9727, exhibit 1654, quoted reportedly above, clearly shows that Dr. DING personally suggested to invite him to visit Hoechst. Dr. LAUFENBERGER declares that Dr. DING considered it the most important purpose of his visit to learn about the animal experiments and the experimental technique of Hoechst.

(See document 68, exhibit 61, document book IV, English page 39,
German page 39, file 22).

This is also shown by document

NI 9732, exhibit 1658, document book 85, English page 68,
German page 71

stating as the suitable time for the visit of the laboratories the first half of April 1943, because later on some of the experimental series would have to be broken up.

Dr. DING's visit at Hoechst on 14 April 1943 was devoted mainly to acquainting him with the laboratory for animal experiments. The questions discussed following this visit concerning his experiences in the clinical testing of the preparation 3582 led to a decisive turn in the relationship between Hoechst and Dr. DING.

55. b) Dr. DING's visit at Hoechst on 16 April 1943.

The participants in the meeting with Dr. DING on 16 April 1943 gave detailed statements on this event:

Professor LAUTNERLEDER:

NI 9811, exhibit 1520, document book 84, English page 16,
German page 24/25, fig 10,

Dr. WEER:

Leu document 58, exhibit 61, document book IV, English page 39/40,
German page 39/40, fig 23,

Dr. FUSCHINGER:

Leu document 59, exhibit 62, document book IV, English page 54/55
German page 54/55, fig 7.

According to these testimonies Dr. DING turned out to be an unacceptible and unscientific tester. Professor LAUTNERLEDER refused Dr. DING's offer to test some more typhus preparations, giving as a reason that he did not have any typhus preparations left. Finally he told Dr. DING that in view of the results no further tests were justified with these preparations.

56. The prosecution claims that at the latest during this discussion Dr. LAUTNERLEDER heard about the artificial infections of Dr. DING.

It bases its claim on Professor LAUTNERLEDER's statement that, after the discussion with Dr. DING it was clear to him from his use of the expression "induced infection" that Dr. DING had not been carrying out clinical tests on soldiers with typhus, but on artificially infected people

(NI 9811, exhibit 1520, document book 84, English page 16,
German page 25, fig 11)

(trial brief of the prosecution part III, figures 153)

In connection with this claim it must be stated never was there any mention, orally or in writing, about artificial infection before Dr. DING's visit.

(Leu document 58, exhibit 61, document book IV, English page 37-39, German page 37-39, fig 17, 18, 19, 21)

Even during the discussion of 14 April 1943 Dr. DING did not mention artificial infection at all.

Professor LUTTENSCHEIDER's statement is only a conclusion from Dr. DIEG's statement about "induced infections", Professor LUTTENSCHEIDER says:

"his statement 'induced infection' made it clear to me..."

Dr. WEBER describes impressively how he himself used the expression "induced infection" when talking to Dr. DIEG and that Dr. DIEG then repeated this expression afterwards in his discussion with Professor LUTTENSCHEIDER.

(See document 58, exhibit 61, document book IV, English page 42, German page 42, fig. 26)

If one takes into consideration that Professor LUTTENSCHEIDER's health has not been the best for a long time and that, according to the expert opinion of the American physicians his memory suffered too, Dr. WEBER's point of view is of special importance stating that, in his memory, Professor LUTTENSCHEIDER placed truths realized later on into earlier periods of time.

(See document 58, exhibit 61, document book IV, English page 41, German page 41, fig. 25)

Dr. WEBER says verbally:

"In no case, however, did anything in the discussion of 14 April 1943 indicate or even make it probable that Dr. DIEG had tried our aeridin drugs on artificially infected persons i.e. concentration camp inmates."

Dr. FUSCHLENGER states in this connection:

"The discussions did not reveal, however, that Dr. DIEG had carried out the tests in an unscientific and extremely unethical manner, as Dr. KOGON made known later in his book 'The SS State'. Since the method of infecting a human being, as stated in this book, differed so completely from the natural way of infection by rickettsia-carrying lice, such a method of conducting experiments never occurred to me as a scientist."

(See document 59, exhibit 62, document book IV, English page 54, German page 54, fig. 7)

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The director of the pharmaceutical-scientific laboratory, Dr. BOCKMUEHL, explained with regard to the information he received from Dr. EBER with regard to the discussion with Dr. DING:

"I remember that doubts arose regarding the dependable unimpeachable testing procedure on the part of Dr. DING. But I could never say that it was understood in Hoechst that the typhus cases experimentally treated by Dr. DING with our preparation were originally healthy concentration camp inmates whom he had artificially infected for the purpose of experimenting with the preparation."

(Lau doc.60, exh. 63, doc.book IV, English page 67/68, German page 67/68, fig. 4)

The fact that Dr. DING, as stated by Dr. EBER, created the impression that he treated soldiers suffering from typhus

(Lau doc.58, exh.61, doc.book IV, English page 37/38, German page 37/38, fig. 18, 19)

is also confirmed by Professor LAUTENSCHLAGER's statement, quoted before, in which he says that after the discussion with DING, it was clear to him "that Dr. DING had not carried through clinical tests on soldiers suffering from typhus."

57. The following also reveals that Professor LAUTENSCHLAGER did not know anything about Dr. DING's artificial infections until the German collapse, were from the medical point of view the artificial infections no suitable basis for carrying through curative tests.

(NI-9811, exh.1520, doc.book 84, English page 16/17, German page 25/26, fig. 12)

(Lau doc.51, exh.54, doc.book III, English page 60, German page 60, fig. 6)

(Lau doc.59, exh.62, doc.book IV, English page 55, German page 55, fig. 8)

(Lau doc.24, exh.9, doc.book IV, English page 64, German page 64, last paragraph)

For drug research and the medical therapy Dr.DING's results were of no value. If Hoechst had known about this, it would not have agreed to have Dr.DING's useless test results published later on.

(NI-9742, exh.1686, doc.book 26, English page 51, German page 64)

Nevertheless Hoechst recommended to Dr.DING to contact Professor HOLDER and also informed him that Professor GERTNER, Tübingen, too, was going to publish the results of his tests.

(NI-9742, exh.1686, doc.book 36, English page 52/53, German page 66/67)

(Lau doc.58, exh.61, doc.book IV, English page 46, German page 46, fig.34)

58. Of all the arguments concerning the knowledge about the artificial infection the fact seems to me most convincing that in view of the multitude of typhus cases the gentlemen at Hoechst could not possibly get the idea that Dr.DING would artificially make a man being ill with typhus and would try to cure them again with the ultra oxidine preparations. Such things had never occurred at Hoechst before. (see quotations above at figure 56).

59. c) Dr.DING's elimination as a tester

aa) Proof for his elimination.

Although, contrary to the opinion of the prosecution Professor LAUTENSCHLAGER did not learn about Dr.DING's criminal character during the discussion of 14 April 1943.

(prosecution trial brief, Part III, No.134)

he nevertheless ordered Dr.DING's elimination as a tester. It was sufficient for him that he was convinced of his untrustworthiness.

(NI-9811, exh.1520, doc.book 34, English page 16/17, German page 25/26, figure 12)

(Lau doc.58, exh.61, doc.book IV, English page 43, German page 43, fig.27)

This directive was carried with strictly.

60. That Dr. MEER carried out immediately Professor LAUTENSCHLAGER's order to eliminate Dr. DING as a tester, becomes evident etc) through the index cards for Dr. HOFER and Dr. DING carefully kept at Hoechst.

(Lau doc. 56, exh. 59, doc. book IV, English page 25/26, German page 25/26)

(Lau doc. 57, exh. 60, doc. book IV, English page 27/28, German page 27/28)

After 13 April 1943 no more shipments of nitro acridine preparations were listed, but all other free shipments.

bbb) from Dr. DING's letter of 11 July 1944 to Professor LAUTENSCHLAGER, which reads:

"It is unfortunate that I did not hear from you in this matter, since our last meeting; I must therefore assume that with exception of the change in administration the preparations concerned are the same, especially since neither the name nor the number of the preparations have been changed. I regret this even now because Dr. MEER informed me at the time that there was no possibility of producing this preparation in the form of an injection."

(HI-9747, exh. 1684, doc. book 36, English page 47, German page 60)

Actually Hoechst did manufacture the nitro acridine preparation in the form of injections and had given it to other persons for tests who reported most favorable results.

(Lau document 43, exh. 46, doc. book III, English page 26, German page 26)

Dr. DING, however, was refused this preparation on the basis of Professor LAUTENSCHLAGER's basic order to eliminate him as a tester

(Lau doc. 58, exh. 61, doc. book IV, English page 44, German page 44, fig. 6)

ces) from the publication of the former medical clerk of Dr.DING, Dr.KOGON of 1947.

(Inu doc.62, exh.65, doc.book IV, English page 76, ("Page 161")
German page 76, ("Page 161")

61. bb) Untenable argumentation of the prosecution in its trial brief, part III, No.135.

The argumentation of the prosecution that Hoechst continued to work with Dr.DING even after his visit of 14 April 1943 and that Hoechst therefore supported the latter's criminal experiments, is untenable.

(trial brief of the prosecution, part III, No.135)

acc) The DING diary lists the therapeutical tests with coridine granulate and Rutanol on 39 experimental persons.

(NO-265, exh.1608, doc.book 64, English page 57a, German page 77/78)

I have grave doubts about the correctness of the date of this experimental series. There are two reasons for these doubts:

(1) On 11 July 1944, Dr.DING, referring to the visit in Hoechst of 14 April 1943, wrote:

"When I met you ... we discussed the therapeutical typhus experiments with your nitro-cordine preparation 3582 and Rutanol which were carried out in the clinical section of the "Department for Typhus and Virus Research" of the Hygiene Institute of the Waffen SS, Jäger-Sachsenwald, during the period beginning January to the end of April 1943.
As is known to you, the results of the experiments which were carried out on 39 typhus-sick persons had a negative result."

(NI-9747, exh.1684, doc.book 86, English page 46, German page 58)

There is no doubt that the 39 persons are those listed under 24 April 1943 who had been artificially infected during this therapeutical experiment. On 11 July 1944 Dr. DING, therefore, was of the opinion that

he mentioned this experimental series already on occasion of his visit at Hoechst on 14 April 1943. This is most probable because otherwise Dr. WEBER's letter to Professor BILING of 19 April 1943 would not make sense, since he wrote there:

"Our interests are now centered on Dr. BING's experiments, the conclusion of which is to be expected in about four weeks' time".

(NI-11425, exh.1664, doc.book 35, English page 91, German page 107)

I want to point out expressly that this letter of Dr. WEBER of 19 April 1943 is not a letter of the IG Farben at Hoechst, but a private letter of Dr. WEBER, of which Professor LAUTENSCHLAGER had no knowledge.

(2) Professor LAUTENSCHLAGER's description of the contents of the curves of patients brought along by Dr. BING, contains the following sentence:

"Although I could see from the curves that after a relatively short period the outcome of the disease was usually fatal, I remarked to Dr. BING that his results were considerably less favorable than those which Dr. Julius EMMI had reported to me from other clinics."

(NI-9811, exh.1520, doc.book 84, English page 16, German page 25, fig.10)

According to the BING diary only the two therapeutical experiments of

10 January 1943 and

31 March 1943

had been carried through by 14 April 1943. Only during the first experiment was there a fatal case. No disease developed during the second experiment.

(NO-265 exh.1608, doc.book 84, English page 50 and 56, German page 69 and 76)

If Dr. BING had curves of patients with him which revealed that "the outcome of the disease was usually fatal" they must be different curves from those referring to the two experimental series of 10 January 1943 and 31 March 1943. Since 21 cases of death occurred during the therapeutical experiment

listed under 24 April 1943, we must assume that Dr.DING had curves of this experiment with him.

This experiment must, therefore, have been under way when Dr.DING visited Hoechst.

62. bbb) The supply of fever curves to the garrison physician of the Waffen SS Weimar-Euchowwald

(NI 9737, exh.1663, doc.book 85, English page 89, German page 105)

(NI 9741, exh.1665, doc.book 85, English page 92, German page 108)

was a favor granted to Dr.DING, in order to avoid additional ill-feelings. If one did not want to supply Dr.DING any more with typhus drugs, one had to be obliging to him in harmless matters, in view of the power situation in Germany at that time. With paper showing millimeter gradation and cicatric venules Dr.DING could not do any damage.

(Lau document 58, cod.61, doc.book IV, English page 44, German page 44, figure 29)

63. ccc) Prosecution document.

NI 11497, exhibit 1667, document book 86, English page 1, German page 2 represents Dr. JEBER's answer to various requests on the part of Dr.DING. "Dr. DOETTL's work" concerned a treatise on "the breeding and keeping of white mice and rats for scientific purposes". - The "other requests for deliveries to Dr.HOVEN" concerned preparations for the tanning of animal skins. Chromosol and Moutriogen were sent.

(Lau doc.61, exh.64, doc.book IV, English page 72/73, German page 72/73, figure 5)

This reveals that these matters also had nothing to do with experiments with typhus remedies.

64. ddd) The prosecution attributes special significance to the fact that after Dr.DING's visit Hoechst did not sever its connections to Dr.HRUOG'SKY.

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In this connection it must be stated that Dr. DING was one of many subordinates of Dr. MRUGOWSKI and that as Commissioner for Epidemics in the East and as hygienist of any Army, Dr. MRUGOWSKI necessarily had a great deal of typhus patients within his area of command. As early as in August 1942 Hoechst informed him that they wanted a clinical test of Preparation 3582 "during the next typhus season",

(NI 11427, exh. 1637, doc. book 35, English page 3, German page 4, fig. 3)

The covering of relations with Dr. DING therefore did not mean a covering of relations with Dr. MRUGOWSKI.

(Lau document 58, exh. 61, doc. book IV, English page 47, German page 47, fig. 36)

HOECHST's letter to Dr. MRUGOWSKI of 17 April 1943

(NI-1142, exh. 1662, doc. book 35, English page 80, German page 92)

which was written three days after Dr. DING's visit, was meant to prevent Dr. MRUGOWSKI from giving an other experimental assignment to Dr. DING.

(Lau doc. 58, exh. 61, doc. book IV, English page 43/44, German page 43/44, fig. 28)

Incidentally, Dr. MRUGOWSKI never handed the preparation 3532 to Dr. DING.

(Lau doc. 54, exh. 5, doc. book IV, English page 8, German page 8, fig. 2)

65. The chlorotone capsules offered to Dr. MRUGOWSKI with letter of 3 June 1943 for the continuation of experiments

(NI 9743, exh. 1666, doc. book 35, English page 94, German page 110)

were tested elsewhere at the same time and were praised especially by Professor HOLLER, the Vienna tester.

(Lau doc. 43, exh. 46, doc. book III, English page 35, German page 35)

Dr. MRUGOWSKI, however, did not order the chlorotone capsules.

(Lau document 60, exhibit 63, document book IV, English page 68, German page 68, fig. 5)

The spasmotitium offered to Dr. KRUGOWSKI in the same letter was a preparation for the improvement of the tolerability of preparation 3582.

6. The clinical package containing 250 tetrapares jellies sent to Dr. KRUGOWSKI for clinical tests.

(NI-11420, Exhibit No. 1672, Document Book 86, English page 6, German page 10)

is not a preparation against typhus, but against cholera, typhus, para-typhoid A and B. Dr. KRUGOWSKI was one of those doctors, who suggested the development of this preparation, as can be seen from the first sentence of the document. This preparation, too, had already been used several times in clinical tests. Dr. KRUGOWSKI did not receive any additional shipments.

(Lau Document No. 6, Exhibit No. 63, Document Book IV, English page 61, German page 68, fig. 6).

7. Nowhere in the evidence submitted by the prosecution is there an indication that Dr. KRUGOWSKI himself carried out illegal experiments in testing the nitro acridine preparation 3582.

68. d) ROCHET had no knowledge of Dr. DING's crimes.

The prosecution attempts to prove the collaboration of ROCHET in the crimes of Dr. DING through several secondary factors.

aa) The preparation 3582 was supposedly tested on persons who were not volunteers in the concentration camps because the preparation was no good on account of its inferior properties.

(Affiant Dr. ROYER; NI-12182, Exhibit No. 1611, Document Book 84; English page 65, German page 96, fig. 7)

This is refuted by the test results of various testers.

(Lau Documents 40-50, Exhibit No. 43-53, Document Book III, English pages 21-56, German pages 21-56).

Furthermore by the statement of an American official authority

(Lau Document No. 59, Exhibit No. 62, Document Book IV, English pages 57-59, German pages 57-59).

and a statement of the chief physician of the city and district hospital of Quedlinburg.

(Lau Document 66, Exhibit No. 69, Document Book IV, English page 82, German page 82) .

69. bb) The correspondence between Farben and the concentration camp of Buchenwald was labeled "strictly confidential" and "secret", since experiments on human beings were involved.

(Prosecution affiant MEYERSON: NI-12184, Exhibit No. 1630, Document Book 84, English page 70, German page 103, figure 12) .

The actual reasons for the confidential correspondence with regard to clinical tests of new drugs were:

aaa) it had to be kept secret before the public until a conclusive opinion about the therapeutic value of the preparation could be obtained.

(Lau Document 58, Exhibit 61, Document Book IV, English page 35, German page 35, figure 14);

bbb) reasons of competition and unclearified patent conditions.

(Lau Document 61, Exhibit No. 64, Document Book IV, English page 73, German page 73, figure 6).

70. cc) From various written reports on the results of DING's experiments HOECHST supposedly learned that the experiments were carried through at the concentration camp of Buchenwald.

In fact HOECHST

aaa) neither received any information on the negative result of the experimental series of 10 January 1943.

(NO-265, Exhibit No. 1608, Document Book 85, English page 50, German page 69, at the end)

(Lau Document No. 58, Exhibit No. 61, Document Book IV, English page 41, German page 41, figure 24),

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neither

bbb) did it receive the case histories made out by Dr. KOGON.

(NO-281, Exhibit No. 1631, Document Book 84, English page 72, German page 113, figure 19)

(Lau Document No. 58, Exhibit No. 61, Document Book IV, English page 45, German page 45, figure 31)

(Lau Document No. 59, Exhibit No. 62, Document Book IV, English page 56-57, German page 56-57 figure 9)

(Lau Document No. 61, Exhibit No. 64, Document Book IV, English page 71/72, German page 71/72 figure 4)

ccc) In figure 31 I have already stated my opinion with regard to the incorrect presentation of the prosecution in its trial brief, part III, No. 119; I want to refer to this opinion also with regard to HOECHST.

71. a) Other documents on the time after Dr. DING's visit at Hoechst.

Dr. DING's original experiments with Hoechst's nitro acridine preparations were all carried out before his visit at Hoechst.

(With regard to the experimental series mentioned in the Ding diary under date of 24 April 1943, I want to refer to figure 61 of this trial brief. They could thus not be prevented by Hoechst. Professor LAUTENSCHLAGER did everything in order to prevent further experiments carried out by Dr. DING. He succeeded in his endeavors. For this reason I consider the allegedly incriminating documents presented by the prosecution from the time after Dr. DING's visit to be irrelevant. I want to discuss them only to be on the safe side.

72. aa) Dr. WEBER never set foot into the concentration camp Buchenwald.

Arthur DIEFZSCH' statement that "during the middle of 1943" Dr. WEBER was in block 46 for about half an hour",

(NI-12184, Exhibit No. 1630, Document Book 84, English page 67, German page 98, figure 2)

is incorrect.

(Lau Document No. 58, Exhibit No. 61, Document Book IV, English page 45, German page 45, figure 31)

(Lau Document No. 59, Exhibit No. 62, Document Book IV, English page 57, German page 57, figure 10).

In view of the fact that the testimonies contradict each other, Arthur DIETZSCH's statement cannot possibly be given preference. DIETZSCH was a concentration camp Kapo in Buchenwald. In 1942 he had been sentenced by the Reich Supreme Court to 14 years at hard labor for felony and high treason and, in 1925, his sentence was changed to 10 years of imprisonment at a fortress. While serving his term he was taken to the concentration camp. In August 1947 he was sentenced during the Buchenwald trial to 15 years in prison because of his participation in crimes committed in the concentration camp.

(NI-12184, Exhibit No. 1630, Document Book 84, English page 67, German page 97, figure 1)

Dr. WEDER, on the other hand, is a reliable and reputable physician and scientist.

The DING diary noted the visit of persons of special importance at the typhus experimental station at the concentration camp of Buchenwald. Under date of 17 March 1942 we find, e.g. the entry:

"Visit of professor GILBERTSTER and Professor ROSE... at the experimental station."

(NO-265, Exhibit No. 1603, Document Book 84, English page 44, German page 64).

One can easily draw the conclusion that Dr. WEDER would also have been mentioned in DING's diary, since he was an important person for Dr. DING, had he really visited the typhus experimental station.

In addition to this it has to be remembered that all matters connected with the concentration camp were kept extremely secret.

(Lau document No. 54, Exhibit 5, Document Book IV, English page 4, German page 4)

73. bb). Dr. WEDER accepted the invitation to inspect Dr. DING's test results at Berlin. He suggested the end of June or the beginning of July 1943 for his visit.

(NI-11498, Exhibit 1663, Document Book 86, English page 2, German page 4)

(NI-11499, Exhibit 1669, Document Book 86, English page 3, German page 6).

This again reveals that at the time of Dr. DING's visit on 14 April 1943 his experimental methods were not recognized in the right light otherwise the results would have been considered useless. (see above, No. 57). Dr. WEGER's opinion, on the other hand was, that he could not judge properly Dr. DING's working methods nor his results unless he had seen his material. However, the conference planned at Berlin never took place.

(Lau Document 58, Exhibit No. 61, Document Book IV, English page 43/44, German page 43/44, figure 27 and 30).

74. cc) Dr. BIELING did not inform Dr. WEGER that Dr. DING used artificial infections in his testing of the nitro acridine preparations. Professor BIELING did not get in touch with Dr. WEGER until after Dr. DING's visit at Hoechst.

In his letter of 18 June 1943 to Dr. WEGER

(NI-9824, Exhibit No. 2260, submitted by the prosecution on 10 May 1948)

Professor BIELING states that he saw Dr. DING's last results. In his affidavit of 15 May 1948 Professor BIELING explains how this formulation is to be interpreted.

(Lau Document No. 72, Exhibit No. 70, Document Book V, English page 14, German page 17, figure 4 - submitted on 1 June 1948).

According to this affidavit he did not study Dr. DING's material. Professor BIELING explained the same fact to the prosecution on 17 April 1947, although the prosecution confronted him with his letter of 18 June 1943:

"From a later conversation with Dr. DING in 1943 I learned that he was connected with the concentration camp of Buchenwald. At this conversation Dr. DING informed me that he had not had any success with nitro acridine. I did not see any graphs of the treatment of typhus patients with nitro acridine."

(NI-8500, Exhibit No. 2269, figure 6- introduced on 13 May 1948)
(Lau document No. 72, Exhibit No. 70, Document Book V, English page 13, German page 16, figure 1 - submitted on 1 June 1948)

This statement is also substantiated by the affidavit of Professor BIELING of 14 March 1948, in which he states in connection with the description of his meeting with Dr. DING:

"Dr. DING used the opportunity to inform me that he had tested the Hoechst nitro acridine preparation on typhus patients, but without visible success. Dr. DING did not present to me any documents, temperature charts or the like. Also in the further course of the war no documents on the use of nitro acridine preparations by Dr. DING have come to my notice. The absence of cures, of which Dr. DING had told me, did surprise me in view of my own experiences..."

(Law Document No. 24, Exhibit No. 9, Document Book IV, English page 63, German page 63, figure 6).

On 20 January 1947 Professor BIELING wrote to the prosecution:

"When I wrote to Dr. WEIER, that he should talk to Dr. DING, I wanted him to orientate himself about the conditions there and to find out whether my unfavorable impression of Dr. DING, with whom Hoechst was already in contact, was justified. It never occurred to me that the great number of persons suffering from typhus might have been infected artificially. I cannot tell however, whether Dr. WEIER ever paid that visit."

(NI-9433, Exhibit No. 1683, Document Book 86, English page 42/43, German page 54/55).

In

(Law Document No. 24, Exhibit No. 9, Document Book IV, English page 63/64, German page 63/64, figure 7)

Professor BIELING explains why he did not suspect Dr. DING having carried out any artificial infection in order to subsequently test the curative effect of the drug, although Dr. DING had informed him of the subsequent artificial infection when he tested the typhus vaccines in 1942.

Furthermore, Professor DIEHLING's remark in the above mentioned letter of 16 August 1943, with regard to the "patients who received one of the preparations already during the incubation" could not arouse any suspicion in Dr. WEIER, that artificial infection had caused the disease.

(Lau document 72, exhibit 70, document book V, English page 13, German page 16, figure 3, - submitted on 1 June 1948)
 (Lau document 58, exhibit 61, document book IV, English page 38, German page 38, figure 26)
 (Lau document 59, exhibit 62, document book IV, English page 53, German page 53, figure 6)
 (Lau document 63, exhibit 66, document book IV, English page 78, German page 78).

The remark of Professor DIEHLING that "the situation in the case of Dr. DING was a very special one"

(NI 962h, exhibit 2250, submitted by the prosecution on 10 May 1948)

could not induce Dr. WEIER to draw any conclusions. During this last discussion with Dr. DING Professor DIEHLING had learned that Dr. DING had dealings with the concentration camp Dachau.

(NI 8500, exhibit 2259, figure 6; introduced by the prosecution on 13 May 1948).

He knew that the curative effect of the preparation was dependent upon the good care the patient received. It seemed to him that the concentration camp inmates suffering from typhus did not receive sufficient care.

(Lau document 24, exhibit 9, document book IV, English page 62, German page 62, figure 6).

On occasion of the visits of his many testors, Dr. WEIER had learned that complaints about the intolerableness of the nitro-acridine preparations were not so much due to any fault of the preparations themselves as to the carelessness on the part of the medical staff.

(Lau document 58, exhibit 61, document book IV, English page 38, German page 38, figure 11).

This is the reason why Professor DIEHLING's remark was not particularly in contrast with his own experience.

75. 4. Nitro acridine preparations for the Behring Institute at
Lemberg.

With reference to the prosecution document

NI 9711, exhibit 1600, document book 86, English page 31, and following, German page 37 and following

the prosecution states that the test quantities were meant for tests on Russian prisoners-of-war and one could see that the non-German patients were not sufficiently fed,

(Transcript 25 November 1947, English page 1341/42, German page 1358/59).

Contrary to this statement I want to state that Dr. HIAS gave part of the preparation 3502 to the contagious wards of the Lemberg medical institute to be tested there and supplied only a small part to a camp of Russian prisoners-of-war to be tested there. It was applied to patients who had fallen ill during the typhus epidemics which was spreading at that time.

(NI 9711, exhibit 1600, document book 86, English page 36, German page 43).

There is no good reason why patients who were insufficiently fed - which was not the responsibility of the Behring Institute at Lemberg - should have been excluded from the application of the remedy.

76. With regard to the request uttered by Dr. HIAS who wanted to apply the preparation 3502 on his lice hosts

(NI 9711, exhibit 1600, document book 86, English page 31/32, German page 30).

Professor DIEHLING gives his expert opinion, according to which it was to be established whether the preparation would also be effective against rickettsial pediculi (lice rickets). Lice hosts are persons who permit, against payment, young lice which were just born, to bite their skin and to suck their blood. Nothing

illegal can be seen from this document.

(Iau document 34, exhibit 16, document book II, English page 31, German page 31).

5. Dr. VETTER.

77. a) Tests on persons suffering from typhus,

The charges of the prosecution raised in connection with Dr. VETTER's experiments, were dealt with and refuted by the counsel of the defendant Professor H. EISEN. I am referring to his statements to the full extent. Supplementing his statements I want to point out the following:

78. aa) Not Hoechst, but Leverkusen selected Dr. VETTER as tester for the nitro acridine preparation 3502.

(NI 9405, exhibit 1700, document book 87, English page 25, German page 29).

79. bb) Dr. VETTER had been known to the leading gentlemen of Hoechst as a conscientious physician and colleague at the Leverkusen plant already in peace time. Nothing detrimental was known about him at Hoechst.

(Iau document 56, exhibit 61, document book IV, English page 48, German page 48, figure 37)

(Iau document 59, exhibit 62, document book IV, English page 57, German page 57, figure 11)

(Iau document 60, exhibit 63, document book IV, English page 69, German page 69, figure 7).

For this reason there was no special reason for Hoechst to check on him. Neither would such checking have had any negative results.

(Transcript 5 February 1948, English page 6461 and 6469, German page 6516 and 6522)

(document H. EISEN 108, exhibit 72, document book IV, English page 31-35, German page 31-35)

(document H. EISEN 74, exhibit 69, document book III, English page 72, German page 72)

(document H. EISEN, 79, exhibit 71, document book III, English page 44, German page 44, No. 10)

(transcript 3 February 1948, English page 6311, 6312/13, German page 6368, 6370).

80. cc) Hoechst knew nothing about the illegal experiments of Dr. VETTER until the end of the war.

(Lau document 58, exhibit 61, document book IV, English page 48, German page 48, figure 37)
(Lau document 59, exhibit 62, document book IV, English page 57, German page 57, figure 11).

61. dd) With regard to the prosecution documents

NI 9410, exhibit 1704, document book 87, English page 35, German page 41 and
NI 12444, exhibit 1705, document book 87, English page 38, German page 45

the statements mentioned under figure 52 are valid for the treatment of the so-called early cases. I am also referring to

document H.B.UEIN 79, exhibit 71, document book III, English page 45, German page 45, figure 11
document H.B.UEIN 85, exhibit 105, document book III, English page 50, German page 50, figure 22.

Dr. VETTER's remark:

"Hardly anything else could be expected from this source" did not refer to Dr. VETTER's incapability, or the worthlessness of the preparation, but to the internal competition between Hoechst and Elberfeld.

(Lau document 59, exhibit 62, document book IV, English page 56, German page 56, figure 8).

62. cc) With regard to his note of 2 March 1944:

(NI 12250, exhibit 1681, document book 86, English page 37, German page 45)

Dr. FUSSENGER explains that his amazement that Professor HOLLER, after the absolutely negative experiments of Dr. DING in Weimar and the experiments by Dr. VETTER which yielded but small encouragement, still had so much confidence in the preparation, meant that he was "pleasantly surprised". This indicates that Dr. FUSSENGER considered the experiments of Dr. VETTER as having been carried out in the usual way.

(Lau document 59, exhibit 62, document book IV, English page 56, German page 56, figure 8).

The same also goes for Dr. FUSSGÄNGER's attitude of 5 June 1943 towards Dr. VETTER's results:

(NI 12448, exhibit 1713, document book 87, English page 60, German page 75).

There Dr. FUSSGÄNGER discusses seriously the results of the experiments which he compares with the results obtained from other testers. As a scientist he would not have done that, had he suspected that Dr. VETTER had carried out artificial infections.

(Lau document 59, exhibit 62, document book IV, English page 55, German page 55, figure 8).

83. b) The treatment of tuberculosis patients.

Dr. VETTER used nitro scridine preparations on tuberculosis patients on his own initiative.

(NI 9419, exhibit 1702, document book 88, English page 3, German page 6)

(Lau document 50, exhibit 61, document book IV, English page 48, German page 48, figure 38).

The obvious results reported by Dr. VETTER caused Hoechst to assume the attitude, not to prevent Dr. VETTER from continuing with his work the way he had started and from gaining more experience along this line.

(NI 9424, exhibit 1721, document book 88, English page 12, German page 19)

(NI 9425, exhibit 1722, document book 88, English page 14, German page 21).

Discovering a remedy against tuberculosis was especially desirable since there is still no faultless specifically effective drug against this disease. An improvement of the course of the disease or even a cure if only of a few tuberculosis patients would have been of inestimable value.

(Lau document 60, exhibit 63, document book IV, English page 69, German page 69, figure 7)

(Lau document 51, exhibit 54, document book III, English page 60, German page 60, figure 5)

(transcript 5 February 1948, English page 6470, German page 6523).

Dr. VETTER used the preparation on concentration camp inmates, who had previously contracted tuberculosis from natural causes.

(Lau document 54, exhibit 5, document book IV, English page 20, German page 20, figure 11).

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A former concentration camp inmate suffering from tuberculosis remembered the good results of this treatment and in 1947 he asked again for this remedy, when he felt that he was going to get a relapse.

(Lau document 64, exhibit 67, document book IV, English page 80, German page 80)
(Lau document 65, exhibit 68, document book IV, English page 81, German page 81).

84. The criticism on the draft of Dr. VETTER's intended publication about his experiences in applying the nitro acridine preparation to tuberculosis patients

(NI 9429, exhibit 1726, document book 88, English page 19/20, German page 26/27)

concerned solely the methods of scientific presentation.

(Lau document 55, exhibit 61, document book IV, English page 46, German page 48, figure 30)
(Lau document 60, exhibit 63, document book IV, English page 69, German page 69, figure 7).

85. III. Professor LAUTENSCHLAGER's responsibility in the medical field.

1. At Hoechst.

Professor LAUTENSCHLAGER's responsibility for the examination of Hoechst's nitro acridine preparations can be established by considering the following three principles:

a) the manufacturing firm bears the responsibility for the harmlessness of a new remedy.

Professor LAUTENSCHLAGER always personally kept up with the progress of the research work. A new preparation was not released for clinical testing unless it had been determined by a thorough check of the material gathered by experiments on animals that there was not even a remote danger of harming the health of human beings.

(Lau document 52, exhibit 55, document book III, English page 62/63, German page 62/63)
(Lau document 59, exhibit 62, document book IV, English page 50-52, German page 50-52, figure 2,3,5)
(Lau document 60, exhibit 63, document book IV, English page 66 German page 66, fig. 2,3).

86. b) The manufacturing firm bears the responsibility for selecting the clinical staff.

Dr. WEIER's task was to arrange for the clinical examination of the remedies developed in the research laboratories. Professor LAUTENSCHLAGER gave him the directives for his work. Dr. WEIER states:

"I bear the entire responsibility for the clinical tests of these products carried out at my instigation".

(Lau document 50, exhibit 61, document book IV, English page 29-33, German page 29-33, figure 2,3,4,9).

As plant leader Professor LAUTENSCHLAGER's duty was to carefully select the subordinates responsible to him. Dr. WEIER who had been working at Hoechst since 1927, had proved a reliable and impeccable colleague so that Professor LAUTENSCHLAGER could entrust him with his full confidence.

(Lau document 50, exhibit 61, document book IV, English page 29-30, and 34-35, German page 29-30 and 34-35, figure 1,4,12).

If Hoechst was responsible for any illegal actions in connection with the examination of the Hoechst typhus remedies, not Professor LAUTENSCHLAGER, but Dr. WEIER would be the person responsible before the law. The presentation of evidence resulted, however, in proving that Professor LAUTENSCHLAGER as well as Dr. WEIER proceeded correctly in selecting and supervising the testers.

87. c) The physician is the only person responsible for clinical tests.

The physician conscientiously selects according to indications the patients to whom the new preparations are to be applied.

(Lau document 51, exhibit 54, document book III, English page 58, German page 50, figure 3).

Professor HALLER of Vienna states:

"I made practical applications of preparation 3582 after I had thoroughly studied the directives submitted to me by H. BOCHST".

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Professor HULLER's great curative successes are based thereon.

(Lau document 50, exhibit 53, document book III, English page 53, German page 53).

Dr. AUER states with regard to the Hoechst directives:

"The physician who conscientiously adhered to those directives could not harm his patients".

(Lau document 51, exhibit 54, document book III, English page 57, German page 57, figure 2).

The conclusion to be drawn is that HUECHST was not responsible for crimes committed by the testers of its nitro acridine preparations, since the crimes were committed without HUECHST knowing about it, i.e. without the consent approval or tolerance of Professor LAUTENSCHLAGER and Dr. WEGER.

2. At Harburg.

88. Professor LAUTENSCHLAGER's responsibility for the Behring Werke Harburg derives from his official position as head of the plant combine Maingawerke. His responsibility therefore comprises, on principle, only general directives, but not the details in the daily work routine of the Behring Werke.

89. a) Dr. DEWITZ retained full responsibility for production.

Professor LAUTENSCHLAGER is no specialist in the field of vaccines.

He permitted the gentlemen of Maingau a great deal of liberty.

(Transcript 6 April 1943, English page 10795, German page 10943/44)

(Lau document 32, exhibit 2, document book II, English page 26, German page 26, figure 2)

(document H. HUECHST 13, exhibit 5, document book I, English page 7, German page 7, figure 23).

90. b) Not Professor LAUTENSCHLAGER was responsible to the government for the production of vaccines and sera of the Behring Werke Marburg, but Dr. DEBETZ and Professor SCHALTZ as his deputy,

(Ism document 36, exhibit 1, document book III, English page 5, German page 5, article 8)
(transcript 8 April 1948, English page 10796, German page 10914).

91. c) The tasks of Hoechst and Marburg are essentially different.

Both fields, that of prophylactic application and that of chemically producing synthetic substances are huge and cannot be surveyed by the individual. Professor LAUTENSCHLAGER was informed only generally about the progress in the field of vaccines. Vaccines were tested every day, and Professor LAUTENSCHLAGER did not have to be informed and was not informed about each procedure. This is the reason why he was not informed about the vaccine tests which were mentioned in the DING diary.

(Transcript 8 April 1948, English page 10834, 10838, German page 11020, 11024).

Professor BIELING's written and oral report on the unscientific methods used by Dr. DING in the testing of typhus vaccines was not reported to Professor LAUTENSCHLAGER. According to BIELING's description Dr. DING had drawn unjustified conclusions from the test results, which Dr. DEBETZ considered as being unjust complaints against the typhus vaccine. These complaints had no basic significance and there was therefore no reason to inform Professor LAUTENSCHLAGER.

(Transcript 8 April 1948, English page 10835, German page 11021).

92. d) On account of the complete difference of the tasks of Hoechst and Marburg there was usually no exchange of experience between the two plants on the preparations to be tested. Even if Marburg had learned about Hoechst's rejecting Dr. DING as a tester on 14 April 1943 the tests of the various vaccines made by Dr. DING after this date would not have been stopped. At that time the comparative tests of typhus vaccine had long been completed. Yellow fever vaccines were received by Dr. DING through the Army Medical Inspectorate since November 1942. He also received the gangrene vaccines via the Army Medical Inspectorate. Besides it has not been established, in any way that he did any harm with these particular vaccines.

(transcript 8 April 1948, English page 10839, German page 11025).

93. e) If any criminal responsibility were established for the Behring Werke at Marburg, not Professor LAUTENSCHLAGER, but Dr. DEMNITZ, the head of the Behring Werke would be the responsible man. Dr. DEMNITZ who during the war, together with a few collaborators produced vaccines and sera for the vaccination of about 120 million people, considered it outside of his power of imagination that one would, of necessity have to think that they would one day perhaps be misused.

(transcript 8 April 1948, English page 10837, German page 11022/23).

The presentation of evidence has proved his completely correct conduct.

3. At Lemberg.

94. a) The BEHRING-Institute of Lemberg was established by Farben pursuant to an official order, in order to meet the shortage of typhus vaccines. The production of plants manufacturing typhus vaccines in the General Government were confiscated by the Wehrmacht.

The needs of the civilian population could not be filled. There was a feeling of panic in the areas which were especially endangered and 1000 Zloty and more were paid in the black market for one dose of typhus vaccine, which were mostly useless imitations.

(Document MAIN 313, exhibit 313, document book VI, English pages 9, 12, German pages 9, 12)

(NI 13580, exhibit 1864, figure 5; submitted on 4 February 1948).

In view of this situation it was a moral duty for IG. to cooperate in the establishment of the typhus institute.

95. b) LEVERKUSEN was in charge of the administration and organizational management of the Institute and Marburg handled the production, the technical and scientific side.

(IAU document 32, exhibit 2, document book II, English page 27, German page 27, figure 3).

The institute was formally independent. Marburg did not exercise any control and it was not necessary to do so, since Lemberg was headed by a first-class reliable expert.

(transcript 6 April 1948, English page 10828, German page 10960)

96. c) As head of the group Mainauwerke, Professor LAUTENSCHLAGER was the highest supervisor of the BEHRING Institute Lemberg. This supervision was limited, in the same way as at Marburg - to giving and supervising general directives. Professor LAUTENSCHLAGER did not receive regular reports from the BEHRING Institute at Lemberg. Details, like the supplying

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of small quantities of vaccine and lice to interested experts were never mentioned, since these were every day events at the Behring Institute.

(LAU document 33, exhibit 12, document book II, English page 29, German page 29, figure 3, 4).

97. d) Not Professor LAUTENSCHLAGER, but the head of the BEHRING Institute Lemberg, Dr. HAAS would have been criminally responsible for any events which occurred in the course of the normal business. The evidence proved, however, that no charges as defined in the indictment can be raised against the BEHRING Institute of Lemberg.

C. Auschwitz.

98. 1. Professor LAUTENSCHLAGER never had anything to do with the employment of concentration camp inmates. In its trial brief, part III, No. 194 the prosecution claims that Professor LAUTENSCHLAGER was never in Auschwitz. The Prosecution did not furnish any proof for this claim.

99. 2. In his affidavit of 2 May 1947

(SI 9811, exhibit 1520, document book 70, English page 77, German page 94, figure 17)

Professor LAUTENSCHLAGER states that "probably in 1943/44" he heard from his colleagues at Hoescht that people were gassed at the concentration camp in Auschwitz.

This statement does not indicate that Professor LAUTENSCHLAGER had any concrete idea about the gassings. Director JAHNE, who was in Auschwitz in April 1944, and who inquired of his son about the rumors about which he, too, had heard,

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received the answer, that nobody knew anything for certain. Later on, Director JAHNE discussed it with Professor LAUTENSCHLAGER in private after his return from his visit at Auschwitz in April 1944. Professor LAUTENSCHLAGER answered that he had heard nothing about gassings.

(Transcript 24 March 1948, English page 9964, German page 10100).

It is obvious that Professor LAUTENSCHLAGER had no concrete ideas about the gassings, and had to consider them as whispering propaganda, as many Germans had experienced it in 1944 and until the end of the war in some form or other. At any rate there were never any reports on gassings in Auschwitz-Birkenau during the meetings of the Vorstand of the Technical Committee.

(Transcript 2 February 1948, English page 6235, German page 6293).

Professor LAUTENSCHLAGER's statements on the date and the contents of what he heard about the gassings "about in 1943/44 are not very reliable. It must be assumed that the discussion with Director JAHNE was the only source of information which Professor LAUTENSCHLAGER recalled only indistinctly when making out his affidavit on 2 May 1947. I again refer to the expert opinion of the American physicians with regard to his health.

To Count 5 of the Indictment.
Common plan or conspiracy.

100. 1. Professor LAUTENSCHLAGER was a member of the Vorstand of Farben and of the technical committee since 1938.

(NI 8004, exhibit 307, document book 84, English page 9, German page 15).

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In both committees he only represented his special fields. This is proved by the documents submitted by the prosecution. They reveal the subjects treated by Professor LAUTENSCHLAGER, as, e.g.:

Scientific problems of the pharmaceutical branch

(NI 9811, exhibit 1520, document book 84, English page 18, German page 29, figure 16)
(transcript 30 January 1948, English page 6146, German page 6203)

"Treatment of natural or regenerated cellulose".

"Method for diminishing the percentage of moisture of cement-raw mud if the viscosity remains unchanged",
"Polyvinyl acetate and Polyvinyl alcohol"

(NI 10934, exhibit 1434, document book 73, English page 26, German page 62/63)

"Method for isolating acetic anhydride from mixtures"

(NI-10937, exhibit 1438, document book 73, English page 65, German page 123)

"Masking agents"

(NI 10938, exhibit 1439, document book 73, English page 75, German page 137)

"Contract for collaboration with Dr. CHWALA, Vienna"

(NI 10939, exhibit 1441, document book 73, English page 93, German page 172)

"About the synthesis of pain-stilling and cramp-removing remedies"

(NI 10941, exhibit 1456, document book 74, English page 88, German page 152)

No material has been presented by the prosecution which would reveal that in the Technical Committee or the Vorstand Professor LAUTENSCHLAGER dealt also with other subjects.

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101. 2. The individual members of the Vorstand had but a general idea about the fields which did not concern them. Not individual actions, but only completed business matters were usually discussed at the meetings of the Vorstand.

(Document EISEN 43, exhibit 5, document book I, English page 2, German page 2, figure 4).

With regard to the employment of concentration camp inmates at the construction of the Buna plant Auschwitz, e.g. the Vorstand had been informed that this was ordered by the government.

(Transcript 2 February 1948, English page 6206/7, German page 6263).

Complaints about bad treatment of foreign workers and prisoners -of-war were never discussed at the Vorstand.

(transcript 2 February 1948, English page 6206/7, German page 6263).

In consequence of these facts Professor LAUTENSCHLAGER's responsibility can be judged only as part of the entire responsibility of the Vorstand of Farben. With regard to this question I refer to the general plea of the defense.

102. 3. With regard to his responsibility as a member of the Technical Committee the same points of view are to be mentioned as in the case of the responsibility of the Vorstand. I am referring in this connection to my trial brief for JAHNE, concerning count I of the indictment, section I, a) 2, page 2/3.

Trial-Brief LAUFENSCHEIDT

CERTIFICATE OF TRANSLATION

13 June 1948

I, Theo v. SUFFERT, Civ. No. B 397 929, hereby certify that I
am a duly appointed translator for the German and English languages
and that the above is a true and correct translation of the
original document.

Theo v. SUFFERT
Civ. No. B 397 929.

Leslie Briar, Mann
(English)

Case 6
Defense

Military Tribunal VI

Case 6

CLOSING-BRIEF

for

Wilhelm R. Manna

submitted by

Dr. Erich Berndt

Defense Counsel

Stang



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A. M A N N 's Career; his Positions outside of and within IG.

The Relation of Mann and the Bayer Sales Combine to the NSDAP
(National-Socialist German Labor Party).

I. Mann describes his career in his affidavit Prosecution Exh. 309, Doc. HI-5167, Doc. Book II, Engl. page 138, German pages 160.

Mann received a thorough professional education. For quite a while he was a plain commercial employee, became Prokurist in 1922 and then in 1929 succeeded his father Dr. h.c. Mann in taking charge of the Bayer Sales Combine Leverkusen. Mann took part in the first world war and was wounded. In 1918 at the risk of his life he saved the inhabitants of the small Belgian town of Lendelede by moving an ammunition train that had been fired upon and caught on fire away so that it would not endanger the population and the town.

Mann Exh. 72, Doc. 72, Doc. Book II, English page 66, German page 66. His business activity as director of Bayer was not determined by commercial interests only. He looked upon it as a great ethical task to supply the doctors with the necessary remedies for the healing of mankind and the prevention of diseases.

Mann Exh. 158, Doc. 201, Doc. Book III, Engl. page 66, German page 66. For example Mann did not turn down the urgent call for help from Poland on the occasion of the Spotted Typhus epidemic 1941/1942 in spite of the fact that the commercial director Zahn had called his attention to the financial losses.

Mann Exh. 318, Doc. 313, Doc. Book VI, Engl. page 10, German page 10.

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Mann distinguished himself especially through his attitude in matters of social welfare. He was always ready to help everybody regardless of origin, position or religion as is shown through the examples and affirmations contained in

Mann Exh. 62/71, Doc. Book II, Engl. page 49/54, German page 49/55
People who have known Mann for years describe him as a man of irreproachable character whom one, alone on the basis of his natural tendencies, would never hold capable of committing an offense or crime, as for example Osenberg, Lisbon, in Mann Exh. 158, Doc. 201, Doc. Book III, Engl. page 66a German page 66a.

II. Mann's Positions outside the IG. Mann did not occupy any high positions in politics or economics. --

He had the following positions:

a) Danish Consul since 1931, hence before Hitler seized the power, and later Danish Consul General. Mann conducted the affairs of the Consulate to the interests of Denmark and not political. He did not subject the Danes to Nazi propaganda.

Mann Exh. Doc. 7, Doc. Book I, Engl. Page 4, German 4

b) honorary Judge of the National Economic Court from 1935 to 1940
Mann attended only one session in which quota questions were discussed.

Mann Interrogation of 31 March 1948. Prot. Engl. page 10281,
German page 10417/18.

c) President of the Society for the Study of Consumption (Konsumforschung), Verwaltungsrat of the Institute for the Observation of the Economy and Beirat of the Research Institute for the Science of Advertising (Werbewissenschaft), all establishments of a purely private economic and non-political nature dating from the time before 1933.

Mann Exh. 4, Doc. 652, Doc. Book I, Engl. page 6, German page 6
" " 6, " 653 " " 1 " " 8, " " 8
" " 7, " 12 " " 1 " " 10 " " 10

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- d) Member of the Reich Association and Vocational Group of the National Union Pharmaceutical Industry, only for a short time, purely vocational organizations.

Mann Exh. 8, Doc. 8, Doc. Book I, Engl. page 11, German page 11.

- e) Member of the National Association of German Newspaper Publishers, which never did meet.

Mann Exh. 9, Doc. 11, Doc. Book I, Engl. page 15, German page 15

- f) Chairman of the Committee for Colonial Economy in the National Group for Industry, having been called by the President, Sengen. This committee never functioned. Only in this capacity was Mann a member of the Large Advisory Council of the National Group for Industry, an honorary Gremium without special duties.

Mann Exh. 10, Doc. 15, Doc. Book I, Engl. page 15, German page 15
" " 315 " 108, " " VI, " " 3, " " 3

- g) Member of the Advertising Council of the German Economy. Mann was not present when it was established. He was called because of his knowledge in the field of advertising of medical remedies, and without him having had anything to do with it. He first found out about it through the press. The Advertising Council was composed almost exclusively of private industrialists who had to do with Economic Advertising. In No. 7 of the Guiding Principles of the Advertising Council it says: "In the sphere of the Economic Propaganda the private initiative is also to be the decisive factor."

Pres. Exh. 62, Doc. Book 44, Engl. p. 31, German p. 49

Mann Exh. 11, Doc. 155, Doc. Book I, Engl. p. 27, German p. 27
" " 24 " 101 " " I " " 50 " " 50

The Advertising Council, according to the statement of its President Runke, was a Gremium which dealt only with economic advertising, but had nothing to do with political propaganda.

Mann Exh. 12, Doc. 10, Doc. Book I, Engl. p. 21, German p. 21.

Mann was on principle opposed to mixing politics with the economic advertising. However, after the beginning of the war, the business management of the Advertising Council with whom Mann had nothing to do, tried to steer towards advertising with a political flavor. But Bayer always held to the ethical and non-political line in advertising.

Mann Exh. 13, Doc. 19, Doc. Book I, Engl. page 24, German p. 24
" " 14, " 222 " " I, " " 27 " 27
" " 15, " 223 " " I, " " 28, " 28
" " 16, " 20 " " I, " " 29, " 29
" " 19, " 224 " " I, " " 35, " 35

Interrogation Mann, 31 March 1948, Prot. Engl. p. 10286, German page 10424.

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- h) Member of the Aufsichtsrat of several industrial enterprises which dealt only with the special sphere of the Sales Combine of Bayer.

Proc. Exh. 308 (20 - 24) Doc. Book 11, Engl. ; 135, German p. 157
Interrogation Mann of 31 March 1948, Prot. Engl. p. 10290/91,
German p. 10425.

III. Mann's positions with the I.G.

a) Mann was Business Manager since 1929 and Director (Leiter) of the Bayer Sales Combine Pharmaceutica since 1934 in Leverkusen. He headed a directorate of 7 directors and 20 Prokurists. One could only become a member of this directorate after proving beyond a doubt over a long period of time that one was capable and irreproachable in character. The directorate was largely independent, as a natural consequence of the extensiveness of the combine. Mann tried to keep up with all the business proceedings. Of course, considering the size of the business he could not know everything that went on. Bayer sold to one million doctors, to one hundred thousand hospitals and to ten thousand wholesale dealers. Conferences were held at Bayer's, one of the directorate and besides one in each department, both meeting at stated intervals. Moreover, in the pharmaceutical section there was still the pharmaceutical Main-Conference, presided over by Professor Hoerlein, because of his seniority. These conferences among them decided about the sales and the possibilities of production.

Interrogation Mann, 31 March 1948, Prot. Engl. page 10293/4,
German 10430.

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Account of an idea of Mann's duties and activities for Bayer is given in a statement in a protocol of a discussion about the directorate, Prosecution Exhibit 783

Mann Exhibit 30, Doc.160, IB1, English p.58, German p. 59.

The Sales Combine Pharmaceutica Bayer was largely independent within the I.G. It was established under the direction of Mann's father after the I.G. fusion through the separation of the Pharma-Sales-departments of the formerly independent share companies "Hoechstwerke vorm. Meister, Lucius und Brüning" and "Farbenfabriken Friedrich Bayer & Co." The special independence of this Sales Combine was given visible expression in the firm having its own name "Bayer J.G.-Farben" and in the Sales Combine's own trademark, the Bayer cross. With regard to the factory of the J.G.-Werk at the same place, Leverkusen, there was in spite of the same location a sharp line of separation. For such utilities as canteen and parking lot used in common, but belonging to the Leverkusen plant, Bayer even had to pay rent. Bayer had in Mann its own business-manager according to the Law for the Regulation of National Labor. Bayer had its own Bayer-agencies in 75 countries.

Mann Exh.27, Doc.614, IB 1, English p.55, German p.55

Interrogation Mann, 31 March 1948, Prot. English p.10271/3
German p.10427.

It was Mann's intention to detach the Sales-Combine Bayer from the J.G.-Concern. He made this suggestion 1931 in the Business committee and in the Vorstand. The suggestion was favorably received, however due to war conditions it was not

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carried out.

Mann Exh. 26, Doc. 166, D3 1 English p. 53, German p. 53
Interrogation Mann, 31 March 1948, Prot. English p. 10202
German p. 10428.

- b) Mann's activity within the Vorstand of the J.G., of which he was an acting member since 1 January 1931 and a regular member since 1934, was in the interest of his duties as director of the Bayer Sales Combine Pharmaceutica. The minutes of the Vorstand show that his occasional reports dealt only with questions connected with this Sales Combine. An exception is found only in a short statement on a Referat of Sauckel which he had incidentally attended at the Reich-Group Industry, and the report on the appointment and the duties of the commercial Test-Committee of the J.G. of which he was the director (Leiter). The orientation of the members of the Vorstand could only be along very general lines owing to the large scope of the questions to be dealt with. In the Vorstand Mann held yearly about 5 Referate concerning questions along his line of work, always short and in summary.

Interrogation Mann, 31 March 1948, Prot. English p. 10207
German p. 10432

The position held by the individual members of the Vorstand within the Vorstand, and what knowledge and responsibility they had in this capacity regarding the activity, plans and intentions of the other members of the Vorstand, is described in the Closing-Briefs for v. Knieriem and for Meier and in the Basis-

Referat of Dr. V. Metzler. We refer thereto. According to all this it can be seen that Mann cannot be held responsible beyond the sphere of his own Bayer activity.

c) The Commercial Committee (K.A.).

of which Mann was a member in his capacity as director of the Bayer Sales Combine, was "a discussion - and information - meeting", limited to concise reports according to the minutes. It did issue general directions (Richtlinien) in the form of resolutions. However these were not binding. Authority to issue directions was out of the question.

Pres. Exh. 338; Doc. Book 12, Engl. p. 181, German p. 161,
Interrogation Mann 31 March 1948, Prot. Engl. page 10297/8,
German page 10432.

d) The East-Asia Committee, Africa-Committee and the East-Committee of the I.G.

of which Mann was a member, dealt with purely commercial special questions, pertaining to these countries, without a decisive function. The Africa Committee never did meet.

Mann Exh. 28, Doc. 161, Doc. Book I, Engl. p. 56, German p. 56.
" " 29, " 163, " " I, " 57, " 57

e) The Propaganda Commission of the I.G. (Propo).

of which Mann was a member until 1936, had nothing to do with political propaganda. This committee dealt only with commercial "Advertising" and served the purpose of exchanging experiences along that line.

Mann Exh. 23, Doc. 107, Doc. Book I, Engl. p. 48, German p. 48
" " 17, " 162, " " I, " 31, " 31
" " 18, " 164, " " I, " 33, " 33.
Interrogation Mann Prot. Engl. p. 10299, German p. 10433.

17. Mann's relationship to the NSDAP.

a) Mann was not active Nazi. He joined the Party on 31 December 1931, outwardly motivated by the unemployment of large circles and for the ideal reasons that in his opinion it (the party) promised to give the people work and bread and that in view of the disunion of the parties at that time it constituted a strong factor of power against the growing communism, it assured a policy of peace and intended to follow the legal way of the constitution. During the first years Mann's attitude towards the Party was positive.

b) With the growing recognition that the negative factors were getting the upper hand, Mann turned more and more away from the Party. A very clear description of Mann's motives in joining the Party, the change in Mann and his final rejection of the Party was given by the witness Karl Weigandt in the session of 1 April 1948.

Interrogation Weigandt, Prot. Engl. p. 10312/13,
German page 10446.

His opposition to the party which especially after the first excesses against the Jews, became stronger and stronger, is shown in the deposition presented among other documents of Doc. Book Mann II, of the lawyer Dr. Schramm, who has known Mann for 20 years, in

Mann Exh. 71, Doc. 166, Doc. Book II, Engl. p. 64, German
p. 64.

Concerning his attitude towards the Party, Mann himself made a statement in the session of 31 March 1948

Interrogation Mann, Prot. Engl. p. 10299/303,
German 10434/38.

Mann did not participate in any party meetings and was never active in the Party. He did not hold any office and did not wear uniform.

Mann Exh. 36, Doc. 42, Doc. Book II, Engl. p. 10, German p. 10
 " " 56, " 53, " " II, " " 38, " " 38

He only paid the official membership fee of 15 - 20 Reichsmark monthly.

Mann Exh. 40, Doc. 646, Doc. Book II, Engl. p. 18, German p. 18

For exclusive reason of love of sports Mann, from 1934 to 1938, was a member and because of a donation, honorary Sturmfuehrer - which is equivalent to the rank of lieutenant in the Wehrmacht - of the Sturm Troopers Cavalry Unit in Leverkusen which was a successor to the Reit-sportverein (Horseback riding club)

Mann Exh. 107, Doc. 670, Doc. Book II, Engl. page 138, German
 " " 37/39 Doc. 122, 153, 80, Doc. ^{p. 138} Book II, Engl. page 11/16
 German page 11/15

c) Mann definitely opposed anti-semitism.

He believed, like many others, that the attitude of the Party would change after the seizure of power, because of the necessity of maintaining good relationship to foreign countries. The excesses against the Jews in 1938 were definitely condemned by him. The witness Weigandt has testified how much shock of Mann was about those events.

Examination Weigandt, Prot. Engl. page 10314, German page 10447

Actual proof and examples for Mann's attitude and Mann's intervention for Jews and other political persecutees during the Nazi regime are shown by the documents:

Mann Exh. 74/96, Doc. Book II, Engl. page 68/113, German page 68/113
 " " 109/112, Doc. Book II, Engl. p. 141/45, German p. 141/45
 " " 322/334, Doc. Book VI, Engl. p. 24/27, German p. 24/27
 " " 53, Doc. 117, Doc. Book II, Engl. p. 33, German p. 33
 " " 158, Doc. 201, Doc. III, Engl. p. 65, German page 65.

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a) Mann did not engage in propaganda for the Party and did not exert any pressure on the employees of Bayer to join the Party. Only one person in Mann's immediate circle, the personnel secretariate with eight employees, was a Party member. Mann Exh. 73, Doc. 167, Doc. Book II, Engl. page 87, German page 87. Those who were not members of the Party did not suffer any disadvantages. Neither when hired, nor when promotions or salary increases were given was the party membership considered. Mann's conduct of business was objective, non-political and social.

Mann Exh.	41/42	Doc.	Book II,	Engl. page	19/20,	German p.	19/20
" "	45/46,	" "	" "	II, Engl. page	33/34,	" "	23/24
" "	52,	" "	" "	II, Engl. page	33	" "	32
" "	55,	" "	" "	II, Engl. page	36	" "	35
" "	57/8,	" "	" "	II, Engl. page	40/2	" "	40/2
" "	63/4,	" "	" "	II, Engl. page	51/2	" "	51/2
" "	165	" "	" "	III, Engl. page	75	" "	75
" "	67/71	" "	" "	II, Engl. page	58/55	" "	58/55

V. The Sales Organization Bayer, under the management of Mann was not at all liked by the Nazi Party and the Nazi ranking. There was no alliance with Hitler's Party.

a) Powerful party circles attacked Bayer because of their sale of drugs which were invented by Jews.

Examination Boerlein of 30 January 1948, transcript Engl. p. 6156,
German page 6214.

Application was made to the Reichfuehrung SS that Bayer should be excluded from Wehrmacht orders because of its international attitude and because of its foreign Jewish representatives.

Examination Mann of 1 April 1948, transcript Engl. page 10323,
German page 10456.

In 1937, Hitler's newspaper "Das Schwarze Korps" attacked strongly the fact that German firms were represented by Jews in foreign countries.

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Mann Exh. 78, Doc. 286, Doc. Book II, Engl. page 75, German page 75

b) The Foreign Organization of the Party (AO) exerted strong pressure on Bayer and expressed already in 1937 its disapproval of Bayer's method to camouflage Jewish agencies, f.i. in Egypt.

Mann Exh. 81, Doc. 305, Doc. Book II, Engl. page 85, German p. 85
Mann was summoned before the AO in 1937/38. He and his directors were reproached for Bayer's negligence as far as the removal of Jews was concerned, f.i. in the Near East.

Mann Exh. 325, Doc. 14, Doc. Book VI, Engl. p. 28, German p. 28.

It is a fact that the leader of the AO, Gauleiter Bohle, in case XI before the Military Tribunal IV, declared himself guilty of exerting pressure by the AO upon public economy.

Transcript, Case XI, Engl. p. 442/50, German p. 4575.

The Reich Ministry of Economics and the export agencies supervised the procedure.

Mann Exh. 79, Doc. 293, Doc. Book II, Engl. page 81, German 81.

c) Nevertheless, the directorate of Bayer, under the initiative of Mann, succeeded in delaying the dismissal of Jewish employees and agents for quite some time by transferring them to or within foreign countries. When all possibilities were exhausted, adjustments were always made by giving generous bonuses, sometimes up to

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three years salary and frequently by evading the foreign exchange laws, in order to ease the economic conditions of the dismissed people and in order to enable them to start a new existence.

Mann Exh. 80, Doc. 109, Doc. Book II, Engl. p. 83, German p. 83
" " 89, " 175, " " II, " 99, " 99
" " 96, " 178, " " II, " 111, " 111
" " 108, " 613, " " II, " 139, " 139
" " 109, " 645, " " II, " 141, " 141
Examination Mann of 1 April 1948, transcript Engl. p. 10325/6
German p. 10458/9

A large number of those people who had heard about Mann's fate, even in foreign countries, have voluntarily confirmed Mann's attitude during the time that was so difficult for them.

Mann Exh. 58, Doc. Book II, Engl. p. 33, German p. 33
" " 74/96 " " II, " 68/113, " 68/113
" " 110/12 " " II, " 143/45, " 143/45
" " 322/24, " " VI, " 6/13, " 6/13.

d) Considering these facts, the document NI-4862:

Proc. Exh. 365, Doc. Book II, Engl. p. 16, German p. 26

submitted by the Prosecution as counter-evidence referring to the request of the KA, addressed to the Sales Organization, concerning suggestions about stop by stop dismissal of non-Aryan employees in foreign countries as basis for a discussion between von Schnitzler and the AO, can only be evaluated as a logical manoeuvre against the urgent requests by the AO.

Examination Mann, transcript Engl. p. 10326, German p. 10459/60

B. Opinion re count I of the indictment

In the legal arguments by Professor Vahl and in the other closing briefs it has been sufficiently discussed what legal and factual prerequisites constitute the corpus delicti of a crime against the peace. Basic arguments are also contained in the motions of the defense of 17 December 1947 and 9 January 1948. Reference is made hereby to these statements.

A decisive element of a crime against peace is the positive knowledge on the part of the perpetrator of Hitler's final decision to engage in aggressive warfare and of Hitler's definite plans for attack. The onus for the establishment of such a knowledge rests exclusively with the prosecution. The prosecution has to establish detailed proof of the fact that the defendant Mann gained actual knowledge of Hitler's intentions to attack and Hitler's decisions, as outlined and established as the only source of knowledge in the IMT judgment. ~~This proof has not been furnished.~~ All indirect evidence e.g. based on the extent and character of a production or other events does not suffice for the establishment of a definite knowledge of Hitler's definite plans of aggressions. Even if such proof were admissible contrary to the clear principles of the IMT judgement the evidence submitted by the prosecution does not justify the assumption of a positive knowledge of Hitler's definite plans to initiate a war of aggression. ~~Without recognising the necessity and obligation of an onus to furnish proof~~ reference is hereby made to the closing brief for Dr. ter Meer

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Where on page 28 following a number of reasons are enumerated standing in the way of an assumption of knowledge, of an obligation to know and a presumption that Hitler had decided on war. Reference is being made to these arguments. In this connection reference is being made by way of precaution to the arguments of the defense regarding the nature of the Farben Vorstand and other Farben organs, particularly with regard to the extent of the knowledge acquired with regard to the activity, the designs and the plans of the individual members of the Vorstand. The following is being furnished as supplementary information:

- 1) At no time Hitler's intention of initiating an ^{aggressive} war was known...

Mann did not participate in the conferences named in the IMT judgment in which Hitler made known aggressive intentions. No evidence was submitted proving that Mann was informed by a participant in these conferences. There are no minutes, no letter, no statement of a third party showing that Mann obtained the slightest information of Hitler's plans of aggression. Neither were the contents of letters and minor conferences, e.g. statements of Göring or other functionaries communicated to Mann.

Mann's interrogation of 1 April 1945, trans. English p.10339,
German p.10471

There is no proof of a pertinent knowledge on the part of Mann. Hitler's public speeches and the press did not furnish any hints as to Hitler's desire to wage war. Hitler always professed his will to peace.

3) Mann did not think of war and did not approve of it either. This is shown by the visit of 160 British employees of the Bayer Ltd. London which he had invited to Leverkusen in July 1939. In his address to the guests on 22 July 1939 which in its entirety was a clear expression of his belief in peace, Mann stated a.o.:

I would ask you to join me in my wish that today's hopes for a peaceful future will be the actual world of tomorrow."

Mann Exh. 98/100, Doc. 184/5, 127 Doc. Book II
Engl. page 121/8, German page 121/8
" " 61, Doc. 60, Doc. Book II, Engl. page 45/46,
German p. 45/46.

Another evidence is Bayer's own pharmaceutical production in Paris which was started by Mann shortly before the outbreak of the war.

Mann Exh. 178/80, Doc. 325/7, Doc. Book IV, Engl. p. 3/6, German p.3/6
Hoerlein, Exh. 21, Doc. 37, Doc. Book I, Engl. p. 33/37, German
page 33/37.

Mann was not interested in a war also for reasons of business.

Bayer's business consisted of 70 % export. Bayer was, therefore, the sales organization with the highest export percentage.

Mann Exh. 135, Doc. 547, Doc. Book III, Engl.p. 33, German p.33.

"As far as we were concerned the war could only destroy a proud production which we had built in decades of peaceful work."

Examination Mann, transcript Engl. p. 10328, German p. 10461
" " " Engl. p. 10344, " 10476.

Therefore, his joy about the Munich Agreement in 1938, as recorded in a protocol of a Bayer directors meeting.

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because "disturbances of our European and Foreign business were avoided thereby."

Mann Exh. 113, Doc. 667, Doc. Book II, Engl. p. 146, German p. 146.

This document is, at the same time, clear evidence for the fact that Mann did not seek an expansion of IG Farben's influence for the price of a war, and the desire for booty. In the fall of 1943, Mann quite frankly stated to the Bayer agent in Lisbon that war is a madness and "the German people does not deserve to be involved in a catastrophe which would come for sure and for which the politicians were to be blamed who did not know how to preserve peace."

Mann Exh. 158, Doc. 301, Doc. Zoo, III, Engl.p. 64, German p. 64.

3) The Prosecution has made claims under Count I A - J, concerning the defendants' support of Hitler's aggressive intentions. Some of these assertions will be discussed here shortly. For the rest, reference is made to the evidence submitted by all defense counsel and their Closing Briefs.

4) Mann heard for the first time through the indictment about the donations by Farben of RM 400,000.- for the general election fund 1933 and of the individual payments of RM 100,000.- to Himmler and of the other special donations of Farben.

Examination Mann of 1 April 1948, transcript Engl. p. 10335,
German page 10468.

A statement concerning such donations of industry was given by the witness Geheimrat Kastl in his statement dated 21 January 1948 in which he defines these donations as some type of buying peace and security and as a certain type of an insurance premium. Excerpt from Kastl's statement in

Mann Exh. 117, Doc. 689, Engl. p. 3, German p. 3.

5) The payments to Ambassadors in foreign countries were neither donations nor did they have any political meaning. These clearings with the Foreign Office via the Zeffi took place "for purely commercial reasons only". Frozen proceeds from a sale were transferred hereby. All payments were officially approved as far as the German foreign exchange laws were concerned, i.e. they were correct payments by Bayer.

Mann Exh. 152, Doc. 617, Doc. Book II, Engl. p. 57, German p. 57.

6) Contrary to the allegations of the Prosecution Bayer under Mann's management

Pros. Exh. 821, NI-9777, Doc. Book 45, Engl. p. 148, German p. 213 did not make any considerable contributions for the NS - organizations, particularly those in foreign countries. According to statements by the bookkeeper Hansen

Session of 29 October 1947, transcript Engl. p. 3042 seq.
German p. 3063, seq.

the compilation in the above named document contains also donations of non-political character, as f.i. the donation for the Winter Relief Fund. The document shows further expenditures for German schools, homes, chambers of commerce and other non-political purposes.

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In spite of these facts, the entire amount in this compilation is only RM 21.000.- for eight years and 33 countries, i.e. only 70 Reichsmarks per year and country.

Mann Exh. 115, Doc. 658, Doc. Book III, Engl. p. 1, German p. 1
But Mann's intention was anyhow to reduce all donations as shown by a circular.

Mann Exh. 116, Doc. 301, Doc. Book III, Engl. p. 3, German p. 2

7) Mann and the sales organization Bayer did not participate in a Mob-planning. Bayer's preparation for a state of mobilization was restricted to securing the needs for office personnel as practiced by every country in accordance with the yearly mobilization orders.

Mann Exh. 118, Doc. 190, Doc. Bk. III, Engl. p. 4, German p. 4
The Sales Organization Bayer did not even have a counter-intelligence agent.

Mann Exh. 164, Doc. 233, Doc. Book III, Engl. page 75, German p. 75.

In 1938, Bayer concluded only one single contract for war material in the amount of RM 600.000.- by order of the OKW Ordnance Office. This amount was extremely small as compared with the civilian turnover. At the outbreak of the war, serious difficulties resulted from the sudden Wehrmacht needs. Production and stocks on hand were not prepared for that. This shows, too, that the Sales Organization Bayer did not figure on an outbreak of war.

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Mann Exh. 119, Doc. 188, Doc. Book III, Engl. p. 5, German p. 5
" " 120, " 293, " " III, " 7, " 7
" " 102, " 187, " " III, " 131, " 131.

The deliveries of pharmaceutical products to the Wehrmacht even during the war was not as high as the civilian needs, as shown by two charts.

Mann Exh. 103/4, Doc. 150/1, Doc. Book III, Engl. p. 133/5
German page 133/5

6) Bayer, under Mann's management, did not engage in export business for the purpose of securing foreign exchange for Hitler's war preparations, as maintained by the Prosecution. Bayer's export to 75 countries was always about 70 % of the total turnover. It did not increase during the time of the Third Reich.

Mann Exh. 135, Doc. 547, Doc. Book III, Engl. p. 33, German p. 33. Transactions involving losses, only for the purpose of acquiring foreign exchange, were rejected by Bayer, which proves that Bayer's intentions were not such as to gain foreign exchange at any price.

Mann Exh. 128,30 Doc. Book III, Engl. p. 22/24, German p. 22/24
Examination Mann of 1 April 1948, transcript Engl. p. 10343,
German p. 10474.

Bayer's export plan served their own interests during the war, that is to say, the maintenance of export and Bayer representations abroad.

Mann Exh. 132/34, Doc. Book III, Engl. p. 26/32, German p. 26/32
Examination Mann of 1 April 1948, transcript Engl. p. 10343/44
German p. 10475/76.

9) Bayer did not have a monopoly in the field of pharmaceuticals and mere and did not use its position and its industrial trust policy for the purpose of increasing the ability of conducting a war or for weakening the defensive power of possible enemies.

Count I F, para. 51/52, Pros. Trial Brief p. 53.

Contrary to the figures contained in the affidavit Strauss, Bayer's share in the German pharmaceutical business consisted of about 22 % only, and in the same business of only 50 - 60 %.

Examination Mann of 1 April 1948, Transcript Engl. p. 10340,

German page 10473

Mann Exh. 124/5, Doc. Book III, Engl. page 15/19, German p. 15/19

Although German and international conventions on a voluntary basis existed, no monopolies or monopol-type ties prevailed.

Mann Exh. 125, Doc. Book III, Engl. p. 16/19, German page 16/19
" " 136/38, " III, " 34, German p. 34

Of 387 Bayer contracts concluded in 1939, only 22 were industrial trust agreements.

Examination Mann of 1 April 1948, transcript Engl. p. 10345,
German p. 10477.

10) Bayer (Mann) did not engage in propaganda, intelligence and espionage in foreign countries - as maintained by the Indictment, para. 58, Count I, I g - particularly not for the purpose of spreading Hitler's plans of attack.

After Hitler's seizure of power, a boycott propaganda by certain circles had started against German goods, especially in South-American countries, which endangered Bayer's business interests.

Mann Exh. 140, Doc. 126, Doc. Book III, Engl. p. 39, German p. 39

In Bayer's circular No. 23, to which the Prosecution (Exhibit 780, Book 44, Engl. page 83) refers, Mann explained to the Bayer agencies the conditions as they actually prevailed in Germany. In this circular No. 23 "concerning propaganda against German goods" dated 31 March 1933

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Mann Exh. 141, Doc. 523, Doc. Book III, Engl. p. 41, German p. 41
Mann writes: "We regret (emphasis added by the Defense) very much that the attitude of certain groups in foreign countries has led to a counter-action in Germany against Jewish enterprises, and we hope that this will only be a temporary counter-measure." Bayer's circular of the directorate No. 27 dated 14 December 1933

Pros. Exh. 782, Doc. Book 44, Engl. p. 89, German p. 91.
intended for Bayer's agencies in foreign countries, proves to be a business report for 1933 and contains only general statements concerning Germany's development, as Mann believed to see them at that time. A propaganda was not intended as shown by the New Years greeting card which was mailed at the same time.

Mann Exh. 49, Doc. 130, Doc. Book III, Engl. p. 28, German p. 28
Examination Mann of 1 April 1948, transcript Engl. p. 10349/50
German page 10483/4

Also the mailing of Hitler's Reichstag speech of 30 January 1934 concerning "the readiness for peace of the German people" to Belgium and to 16,000 physicians

Pros. Exh. 783/4 Doc. Book 44, Engl. page 93/44
does not, in itself, constitute a promotion of the aims of the Nazi-program.

Prosecution Trial Brief page 56.

The contents of that speech was not secret but had already been published via press and radio.

Examination Mann of 1 April 1948, transcript Engl. page 10350/51,
German page 10484.

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Moreover, the mailing of pamphlets to German agencies and the use of address material was not Bayer's own initiative. Bayer received always directives from Berlin respectively the competent Gau-Propaganda Offices in Cologne and Duesseldorf, as proven f.i. by a letter of the Wipo.

Mann Exh. 145, Doc. 296, Engl. p. 48, German p. 48

Bayer could not entirely ignore these requests by the Party. However, Bayer tries successfully to counteract these requests. They succeeded, for instance, in preventing the delivery of the important address material to the Propaganda Ministry.

Mann Exh. 145, Doc. 296, Engl. p. 48, German p. 48
" " 146, " 126, " 56, " 56

Mann endorsed these with the words: "Well done". These documents are an elucidate addition to

Pres. Exh. 832, NI-8139, Doc. Book 46, Engl. page 24.

The letters submitted by the Gau-Propaganda Office to the IG for forwarding purposes, were - in agreement with Mann - mostly destroyed and not passed on to the Bayer agencies.

Mann Exh. 150, Doc. 575, Engl. p. 54, German p. 54,
" " 151, " 349, " 56, " 56.

The opening of a correspondence office in Buenos Aires, under management of the chamber of commerce

Pres. Exh. 788, 789, Doc. Book 44, Engl. page 102, 109.

to which Bayer - like other German firms - contributed financially, was not caused by reasons of political propaganda.

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but by purely political considerations, in order to counteract the latent anti-German boycott movement. This had nothing to do with Party agencies.

Mann Exh. 142, Doc. 325, Doc. Book III, Engl. p. 43, German p. 43
Examination Mann of 1 April 1948, transcript Engl. p. 10353,
German p. 10486/9

Bayer resp. Mann did not have any connection with the Aufklaerungsausschuss Hamburg/Bremen (Pres. Exh. 809)

Mann Exh. 149, Doc. 306, Doc. Book III, Engl. p. 54, German p. 54

Even when the Brazilian radio asked for documents in connection with an anti-communist campaign, in accordance with the expressive desire of the President of the Brazilian Republic

Pres. Exh. 800, NI-2677, Doc. Book 43, Engl. p. 54.

Bayer informed its agent Kaehle on 17 August 1937 that they would prefer "if these matters would be negotiated through the competent official resp. Party-official German agencies".

Mann Exh. 146, Doc. 309, Doc. Book III, Engl. p. 52/53, German p. 52/3
" " 147, " 360, " " III, Engl. p. 51, German p. 51

A letter by the Chemica Rio de Janeiro, dated 5 February 1936 shows that the Bayer agencies - being quite independent in all matters - were only guided by commercial considerations.

Mann Exh. 144, Doc. 308, Doc. Book III, Engl. p. 46, German p. 46
Of course it was not - as emphasized in

Pres. Exh. 785, Doc. Book 44, Engl. page 95
desired that advertisements were placed with foreign newspapers, which at the time were publishing extensive articles of inciting and contumacious anti-German nature.

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As a matter of principle, however, Beyer rejected any mix-up of political points of view with its publicity campaign in foreign countries, as shown by the example in

Mann Exh. 143, Doc. 261, Doc. Book III, Engl. p. 45, German p. 45

In accordance with

Pres. Exh. 786, Doc. Book 44, Engl. p. 96

it has only been determined on Beyer's directorate meetings that foreign Beyer agencies should refrain from engaging in anti-German political propaganda. It was however rejected to use those agencies for political propaganda in foreign countries. Mann's remark during the Beyer directorate meeting of 16 February 1938.

Pres. Exh. 803, Doc. Book 45, Engl. p. 18

concerning "clear national-socialist attitude" was caused by many complaints of the Party (AO) concerning Beyer's agent in foreign countries. This remark was laid down in the minutes in order to have a proof in case of a discussion with the AO that something had been done. It is the same case as concerning the remark re point 85 of the quoted protocol referring to the dismissal of foreign Jews. This is confirmed by Beyer's actual attitude in this question.

Examination Mann of 1 April 1949, Engl. p. 10352/3, German p. 10486

Complaints by the AO and difficulties in foreign countries also were the cause of Mann's circular, dated 25 February 1938.

Pres. Exh. 29, Doc. Book 5, Engl. page 170.

in which Mann requested the Beyer agencies to support the Party offices. It was the meaning of the letter, to avoid unnecessary differences with the AO in foreign countries. The Beyer agencies did not understand the contents of this letter differently.

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Mann was interested that the Bayer agents were "more careful" in political discussions with Party officials as shown by the statement of the Bayer agent Osenberg, in Lisbon.

Mann Exh. 158, Doc. 201, Doc. Book III, Engl. page 66, German p. 66

The document

Proc. Exh. 3092, NI-8416

which was submitted by the Prosecution in the cross-examination of Mann on 5 April 1948

Examination Mann, transcript Engl. page 10590, German p. 10731 shows Mann's intention to avoid giving political character to economic interests.

Examination Mann of 1 April 1948, transcript Engl. p. 10353/4
German p. 10486/88.

The manager of Bayer's overseas business, Direktor Mantzel, expressly confirms that it is out of question that the management of the Bayer Sales Organization was imbued with national-socialist spirit.

Mann Exh. 165, Doc. 618, Doc. Book III, Engl. page 76, German p. 76.

Mann himself never engaged in any propaganda when traveling overseas or in European countries.

Mann Exh. 47, Doc. 297, Doc. Book III, Engl. p. 25, German p. 25.
" " 48, " 298, " " III, " 26, " 26.

- 11) Espionage abroad on the part of the IG with the cooperation of the Bayer Sales Combing under Mann did not take place (Prosecution Opening Statement, page 134).

The Prosecution bases its contention on the alleged espionage activity of three staff members of the Bayer companies in Argentina, Brazil and Columbia. These employees, Hermann, Herzmeyer and Schob, have been designated as spies in the

Pros. Exh.	806,	Vol. 44,	Engl. p. 98,	German p. 182
" "	805,	" 44,	" " 24,	" " 51
" "	914,	" 49,	" " 71,	" " 71
" "	829,	" 48,	" " 13,	" " 18.

These documents are reports of USA agents. Exh. 805 is a publication of the American State Printing Department. They do not contain proof which would support the contention concerning the espionage activities of the above-mentioned persons. No mention is made of the source from which the reporters had obtained their information. Their evidentiary value is therefore extremely doubtful, which is also true of the remaining Pros. documents introduced in support of this point. Indeed, a thorough examination has revealed that the above-mentioned employees of the Bayer agencies have not been engaged in espionage. This may be seen from the documents

Mann Exh.	34,	Doc. 458,	Doc. Book III, Supplement
Ilgher Exh.	176,	Doc. 175,	Doc. Book II, page 25,
Mann Exh.	159,	Doc. 118,	Doc. Book III, page 67.
" "	160,	" 116,	" " III, " 68.
" "	156,	" 619,	" " III, " 62

In regard to Schob there exists a statement of the Aliens Police Bogota/ Columbia, officially confirmed by the US Consulate, according to which Schob had never been involved in an act of espionage. This document from Bogota

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arrived after the case-in-chief had been rested. The Bayer agent Schreiber in Mexico, whose Bayer agency was nearest to the USA, declares that he was not engaged in espionage, neither privately nor in the line of business, and that he was not urged upon to do so by any party, neither by Bayer nor by Mann.

Mann Exh. 162, Doc. 671, Doc. Book III, page 71.

When in the beginning of 1944 Harmeyer was suspected of espionage he was suspended at once from further activity by a resolution of the management solely on the grounds of this suspicion, although it subsequently was found to be without a basis. His salary was blocked for so long "as he was not able to explain his situation to the full satisfaction of his firm and the local (Argentinian) police."

Mann Exh. 161, Doc. 315, Doc. Book III, page 70
" " 160, " 115, " " III, " 68

This also is clear proof of the fact that Bayer did not tolerate espionage on the part of their employees. Mann's attitude and policies are summed up in the statement that a Bayer agent and employee abroad must follow the line of correctness and fairness toward the country which had admitted him and that they must refrain from spreading any kind of political propaganda.

Mann Exh. 157, Doc. 608, Doc. Book III, page 63,
" " 156, " 201, " " III, " 64,
" " 334, " 458, " " III, Supplement.

At no time were agents abroad approached by Bayer or Mann with the request to engage in any kind of espionage activity, as had been testified by the director of the Uebersee (Trans-ocean) Department, Direktor Mentzel.

Mann Exh. 156, Doc. 619, Doc. Book III, page 62

The head of the La Quimica Bayer Peru also testified

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that Mann requested him to see to it that "his Bayer agencies refrained from any kind of politics and propaganda"; furthermore, "Mann never made any requests to engage in espionage activities or to enter the services of any German agent."

Mann Exh. 157, Doc. 606, Doc. Book III, page 63.

The Bayer agent Osenberg, who has been in Portugal for 20 years, which country by the way would have held considerable interest for espionage activities owing to her geographical position and her state of neutrality, declared as absurd the Prosecution's contention to the effect that the Bayer agencies abroad had been hotbeds for espionage, he stated: "In the 20 years during which my firm sold Bayer products no requests had ever been made to us to supply information that went beyond ordinary commercial information, the market situation, the solvency of the customers, particulars on sanitary matters, etc."

Mann Exh. 158, Doc. 201, Doc. Book III, page 65

Also the temporary shutting down of the Chimica Bayer in Rio de Janeiro, referred to in the

Pres. Exh. 897, HI-7666, Doc. Book 46, Engl. page 5

had nothing to do with espionage as was disclosed by the official investigation. This punishment was the result of a violation of the Brazilian foreign exchange laws, which must be blamed on a mistake on the part of the foreign Office, as may be seen from the correspondence on the subject.

Mann Exh. 163, Doc. 299, Doc. Book III, page 72

12. The Economic Intelligence Service of the IG and the Institution of the IG Verbindungsmaenner (liaison officers) had nothing to do with espionage.

To be sure there were a few Bayer agents among the IG Verbindungsmaenner. As a matter of principle, neither Bayer nor Mann had occupied themselves with these matters.

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The reports of the IG Verbindungsmänner did not contain anything unusual. Mann received such reports only in those few cases where the reports originated from Bayer agents.

Mann Exh. 139, Doc. 549, Doc. Book III, page 38
Interrogation of Mann of 1 April 1948, Engl. p. 10349, German p. 10483

Contrary to the contention of the Prosecution who relies on an affidavit Mann.

Pros. Exh. 915, Doc. NI-8150, Doc. Book 49, Engl. page 60.

Mann was not inclined to render special aid to the Wehrmacht by making reports to them. The matter Kettnis, related by Mann himself in the above-mentioned document clearly shows this, which document Mann had presented to the Prosecution on his own initiative, who did not know of this case. Mann did not accede to the wishes of the Wehrmacht, kept putting Kettnis off and finally let him have unimportant, generally known reports.

Mann Exh. 153, Doc. 229, Doc. Book III, page 59
" " 154, " 235, " " III, " 60
" " 150, " 228, " " III, " 61.

Other fundamental arguments against the charges of the Prosecution in Count I, G (propaganda, espionage and intelligence) and further evidence of the defense is contained in the closing brief for Dr. Ilgen. Reference is respectfully made to this.

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C. Comment to Count II of the Indictment.

In Count II the defendants are charged with having committed war crimes and crimes against humanity by acts of pillage and spoliation in the countries occupied by Germany.

The fundamental, material and legal arguments of the defense to this Count will be presented by Dr. Diemel's, Attorney-at-Law. Reference is herewith respectfully made to his statements. The IG is being charged with the acquisition of chemical plants in the occupied foreign countries. By this acquisition the defendants allegedly had intended to procure the enterprises in question and their resources for the German war economy with the objective to carry out their war of aggression and to prepare for new attacks.

In this connection I respectfully refer to my statement in the closing brief Dr. ter Meer at the end of my arguments to Count I.

The Prosecution has connected my client Mann with the charges in the indictment, namely, with the events which took place in Russia and France (in regard to Rhone-Poulenc). I shall examine these charges in the following.

I.

R u s s i a

Mann's participation in acts of spoliation in Russia is seen by the Prosecution in the fact that Mann was the head of Jarben's Commercial Committee East and in the fact of his having caused a report on Russia of 3 January 1943

Proc. Exh. NI-2996, Doc. Book 63, Engl. p. 37, German p. 33.

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to be submitted to the Vorstand members and the Commercial Committee.

- 1) The Commercial Committee East was set up at the end of December 1942.

It was a purely private affair of the IG and may not be mistaken for official agencies which had a similar name. The tasks of the IG committees may be seen from the Vorstand transcript of 17 December 1942.

Mann Exh. 170, Doc. 310, Doc. Book III, Engl. p. 88
Pros. Exh. 1533, NI-8265, Doc. Book 80, Engl. page 43, German p. 134.

The objective was "to establish contact between the sales combines" which was found to be necessary in view of the "ever increasing resumption of economic life in the occupied Eastern territories". The committee was to occupy itself "with all economic matters relating to the occupied Eastern territories". Accordingly, this committee consisted primarily of the managers of the sales combines which is proof that the committee was concerned solely with questions pertaining to sales to the Eastern territories. This is also confirmed unequivocally by the witnesses Dr. Krüger and de Haan

Mann Exh. 169, Doc. 138, Doc. Book III, page 85/7
" " 173, " 295, " " III, " 92/7
(Testimony Krüger)

The Commercial Committee East never attained importance for the IG. It had no decisive functions. The sole proposal submitted by it concerned the setting-up of the Verkaufsbüro Riga G.m.b.H., successor of the former IG Agency. This company only sold goods in the occupied Eastern territories to cover the requirements

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of the local population but did not take anything away from there. The committee had nothing to do with the setting-up and the activity of the Ostmonopolgesellschaften, neither with the 4 % participation of the IG in the Continentale Oel AG.

Mann Exh. 169 and 173, Doc. Book III, page 85 - 92.

The witness de Haas, the author of the situation report of 3 January 1943, has stated, that the report in question was a Wipo report and thus purely a collection and passing-on of information on economic matters in the East which he himself had received at the Ost Ministry and from other governmental agencies. This report is not Mann's own opinion, neither is it the view of the Ost Committee, "he only prepared an objective compilation of facts and plans given me (de Haas) by the offices."

Mann Exh. 169, Doc. 138, Doc. Book III, page 85/7

3. The Commercial Committee East had no relations with the Chemie Ost G.m.b.H. Business manager de Haas stated that in his capacity as employee of the Wipo Abteilung Ostverbindungsstelle he had only requested information from the Chemie Ost now and then.

Mann Exh. 169, Doc. 138, Doc. Book III, page 86.

4. Thus, there is no connection whatsoever between Mann's activity as manager of the Commercial Committee East and any acts of spoliation in Russia.

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II. Rhone Poulenc.

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Rhone Poulenc and Bayer in pre-war France.

(1) 50 % of the activities of Rhone Poulenc/Specia consisted of the manufacture and the sale of pharmaceutical products. Their plants were located at St. Fous near Lyon in the unoccupied part of France. The central production management was also located there. The firm supplied about 20 % of the French market's need on pharmaceutical products. Contrary to the report of the Wipe/Berlin (Proc. Exh. 1252), which does not originate with Bayer, it did not enjoy a monopoly.

(Statement Mann, transcript, Engl. page 10394, German page 10527)

At the beginning of World War II Bayer had four licence contracts with Rhone Poulenc concerning Germanin-Wagenol, Atrodil-Diagenorenol, Anti-Malaria agents and vitamins.

(Mann Exh. 181, Mann Doc. 329, Doc. Book IV, page 8/9)

Pharmaceutical inventions were not protected in France against imitations. Rhone-Poulenc also imitated a large number of Bayer preparations and exploited pharmaceutical inventions of the IG.

(Mann Exh. 209, Mann Doc. 372, Doc. Book IV, page 75,
" " 210, " " 528, " " IV, " 72,
" " 211, " " 373, " " IV, " 80,
" " 183, " " 331, " " IV, " 8/9).

The French pharmaceutical industry used the trade mark "Aspirin" which originated with Bayer and which was confiscated by the French Government pursuant to Art. 297 b of the Versailles treaty.

(Testimony of Mann, Transcript Engl. page 10401/02,
German page 10535/36).

These imitations by the French pharmaceutical industry took away all special inclination among buyers to purchase Bayer-novelties when they appeared in France; the use of the name "Aspirin" in France was also a reason for the fluctuating demand for Bayer-products in France.

(Mann's testimony, record E.p. 10391/2, 10396, G.p. 10525, 10530;

Mann Exh. 219, M.Doc. 347, DB. IV, p.99,

" " 176, " " 321, " IV, " 1).

In order to overcome these difficulties and the aversion of the French customers to imported German goods, Bayer had decided already long before the war to start a separate production of pharmaceutical products together with a French company in France. Various establishments in Paris and its vicinity had already been inspected.

(Mann Exh. 177, M.Doc. 526, DB. IV, p. 2,

" " 178, " " 326, " IV, " 3,

" " 179, " " 325, " IV, " 5,

" " 180, " " 327, " IV, " 6,

" " 219, " " 347, " IV, " 99;

Hoerlein Exh. 21, H.Doc.47, DB. I, p. 33/37,

Testimony Hoerlein, record e.D. 6360 ff, G.p. 6417 ff.)

Already before the war, a closer economic cooperation between the industries of both countries, was the subject of an agreement between the German-French Government Committee.

(Mann Exh. 193, M.Doc. 339, DB. IV, p.38).

The plans of German official agencies concerning the French pharmaceutical industry.

2. At the end of August or in the beginning of September 1940, Mann travelled to Paris, first of all, in order to settle the conditions prevailing at the local Bayer-branch, Rigal & Co, as it can be seen from the transcript on the subsequent

discussion in the Reich Ministry for Economics of 29 September 1940.
(Mann Exh. 202, M.Doc. 353, DB IV, p.54).

For a trip to France, a permit was required from German authorities at this time, including one from the German-French Armistice Delegation in Wiesbaden.

(Mann's testimony, record E.p. 10407, 10420/21, G.p. 10542, 10555).

In the course of the necessary discussion in Wiesbaden and the conferences with the economic departments at the Military Commander's office in Paris, Mann tried to get information on the plans of the governmental agencies regarding the French, in particular the pharmaceutical industry. He noticed two tendencies, one of them demanding the complete closing-down of the French pharmaceutical industry, whilst the other desired a cooperation with this industry without touching its individual entity.

(Pres. Exh. 2094, Doc. NI 9265;

Mann Exh. 202, M.Doc. 353, DB IV, p. 54).

Furthermore, it came to Mann's knowledge that German official agencies planned an economic integration of the French industry and were thinking of retribution for damages which had resulted for the German industry from the Treaty of Versailles, for instance through the confiscation of patents and of rights on trade-marks.

(Mann Exh. 194, M.Doc. 341, DB IV, p. 40,

" " 195, " " 342, " IV, " 41,

" " 196, " " 343, " IV, " 45).

The Pres. Exh. 1241, DB 59 shows that Dr. Michel from the Military Commander's Office in Paris - not Mann himself or Dr. Michel with Mann's consent - is supposed to have said that the "historic chance must be exploited to the last".

(Mann's testimony, record E.p. 10408/9, G.p. 10544)

The government actually requested firms to file their compensation claims.

(Testimony Min. Rat Schlotterer from the Reich Ministry for Economics record c.S. 5858, d.S. 5903;

Mann Exh. 197, M.Doc. 549, DE. IV, p. 48)

The government also intended to make use of France's economic potential in the general war effort of Germany.

(Testimony Mann, record E.p. 10406, G.p. 10540).

Mann's plan regarding a private-industrial agreement with Rhone-Poulenc concerning collaboration.

3. I.G. Farben Bayer, under Mann's management, never has joined this plan. Independent from these plans Mann tried to come to an understanding, on a private industrial basis, "anticipating of government measures that were to be expected or that might possibly be contained in the peace treaty." He wanted to establish a fait accompli so that the mutual interests would have been served.

(Mann's testimony, record E.p. 10406/07, G.p. 10541).

In continuation of Bayer's pre-war plan to cooperate with a French firm mentioned on page 2, he planned a joint sale of German and French pharmaceutical products and an exchange of all novelties and experiences, without interfering with the French production.

(Mann Exh. 199, M.Doc. 345, DE. IV, p. 51;

Prosecution Exh. 2094, Doc. XI 9265, page 3;

Prosecution Exh. 1266, DE. 59, E.p. 38/39, G.p. 37,

Prosecution Exh. 1268, " 59, E.p. 49/50, G.p. 76/77).

From among all firms which might have been considered for collaboration, the firm of Rhone-Poulenc because of its position, its scientific work and especially because of the relations that already existed before the war, was the only French firm that came in question for such an understanding.

(Mann's testimony, English transcript 10405, G.p. 10539;

Mann Exh. 219, M.Doc. 347, DE. IV, page 100).

Mann had three aims:

1. A commercial collaboration on the basis of a joint sales enterprise;
2. The handing over of all new Bayer-inventions for utilization in France and exchange of scientific and technical experiences.
3. An understanding concerning all the questions connected with the admitted imitation of Bayer-products and the use of the trade-mark "Aspirin" in order to counteract from the beginning and at the same time all possible influence through claims for damages by the government.

Therefore, as we shall see later on, these aims formed the principal basis of a series of three agreements.

(Mann's testimony, English transcript 10416/17, G.p. 10552;

Mann Exh. 237, M. Doc. 401, DE. V, p. 40.

" " 238, " " 409, " V, " 42,

" " 531, " " 356, " V, " 84,

" " 419, " " 303, " V, " 158).

The first contact with Rhone-Poulenc without any assistance of German authorities.

4. The Reich Ministry of Economics

(Mann Exh. 202, M.Doc.353)

and the Economic Department in the office of the Military Governor in Paris (Proc.Exh. 1263, DE. 59, p. 29)

gave Mann permission to conduct these negotiations. Therefore, Mann tried to contact the firm of Rhone Poulenc in Paris at the beginning of October 1942. He made use of M. Fraure Beaulieu's mediation whom he and the gentlemen from Rhone-Poulenc knew from former times. Mann wanted to make it clear that they did not intend to negotiate "as conqueror with the conquered" and "that the French partners should not have the feeling of being under duress."

(Mann Exh. 208, M.Doc. 378, DS. IV, p. 72,

" " 218, " " 379, " IV, " 96,

" " 219, " " 347, " IV, " 101;

Mann's testimony, English transcript . . . , G.D. 10548).

Mann tried from the beginning to exclude any kind of participation of the German authorities in these negotiations and any influence whatever of German agencies. Therefore, he went to Paris on his own initiative.

(Proc.Exh. 2144, Doc. NI 795)

and did not ask for any direct or indirect assistance from German official quarters. The agencies in Berlin and Paris were only so far informed concerning the progress of the negotiations as it was necessary.

(Mann Exh. 218, M.Doc. 379, DS. IV, p. 96,

" " 219, " " 347, " IV, p. 101,

" " 201, " " 337, " IV, " 53,

" " 198, " " 322, " IV, " 50).

The Proc.Exh. 1241, DS. 59, English page 6,8,11 (Proc. Trial brief page 47 of the original) is not incompatible to these facts. It states that the various official agencies made suggestions, submitted proposals and offered to put pressure upon them, but all these on their own initiative without Mann having asked them for such an offer or without his wanting such a pressure.

It was not possible to introduce an obligation to obtain permission for starting production in the unoccupied territory. The same applies to Pres. Exh. 1263, DB 59, English page 30, which only mentions a not requested offer by the Kriegsverwaltungsrat Dr. Michel. Contrary to the prosecution's statement (Trial brief page 47 of the original) neither of the documents show "that the I.G. Farben made energetic efforts to intimidate the Rhone-Poulenc and to threaten them and to request the government to exert pressure for this purpose". Mann did not like such measures, he never asked for them and, at no time, such measures were taken. Rhone-Poulenc was never hampered in its production.

(Mann Exh. 198, M.Doc. 322, Dy. IV, p. 49,

" " 218, " " 379, " IV, " 96,

" " 201, " " 337, " IV, " 53,

" " 200, " " 348, " IV, " 52,

" " 206, " " 378, " IV, " 72;

Mann's testimony, transcript English pages 10410, 10413, 10417/18,
10423, 10454,

German pages 10544, 10548, 10553,
10559, 10587).

As it can be seen from the minutes taken during the negotiations with Rhone-Poulenc and also from the correspondence which has been submitted, that no official agency actually took part in these negotiations or interfered with them. The only discussions which Dr. Kolb from the Military Commander's Office in Paris had, with Monsieur Bè from Rhone-Poulenc, only dealt with questions concerning cellulose and Anorgana, but not with pharmaceuticals. (See Mann's testimony, transcript English p. 10412/13, German p. 10548).

No further discussion between Mann and the Paris official agencies took place either.

Mann's suggestions laid down in the memorandum of 5 October 1940

5. Mann handed over to M. Faure Beaulieu the note of 5 October 1940, which contains the suggestion in figures 5-7, as a basis for the "private enquiries" aiming at the "sounding of possibilities for an understanding" with Rhone-Poulenc.

(Mann Exh. 203, M.Doc. 355, DB. IV, p. 58/61).

In accordance with the facts

(Schlotterer's testimony, English transcript 5857/58, G.p. 5903;

Mann Exh. 157, M.Doc. 649, DB. IV, p. 48)

the note contains the introductory indication that the peace agreement will provide a certain amount of damages for those German firms who have been adversely affected by the French imitations of pharmaceutical products and for the violations of trade-marks. Through this private economic understanding the effects of any future official regulations should be "from the outset subject to a favorable private economic agreement," which would provide the basis for a "joint trustworthy cooperation".

(Figure 5 to the note of 5 October 1940;

Mann Exh. 203, DB. IV, pp. 61, 59). This note suggests as one of the most important points the joint sale of pharmaceutical products by both firms through a joint sales company, whereby Bayer will participate to the extent of 51%. The original firm is to get a standard profit of 30%, (figure 5 d). Figure 7 of the note states, that if need be, the I.G. would also be prepared to sell in future its products to the Sales Company. Therefore, already at the first meeting with Faure Beaulieu, Rhone-Pulenc was informed about the plan concerning the new products because the saw by Mann's original note.

(Mann Exh. 204, M.Doc. 359, DB. IV, p. 62 -- "Faure Beaulieu had taken along to the meeting our Aide Memoire."

Pres. Exh. 1265, Doc. NI 8612, DB. 59, English p.26, G.p.35:

"File notes of Messrs. Bo and Wendling after having read the original

note of the I.G. signed by Herr Mann-;

Testimony Mann, transcript English p. 1044, G.p. 10549).

Contrary to the Prosecution's statement, that Rhone-Poulenc was asked to pay high retributions for damages (trial brief page 47 of the original), Mann's original note of 5 October 1940 only reads as follows: "It may also be expected that a retroactive ruling will follow in the peace agreement, providing a certain amount of damages for these German firms who have been adversely affected by the French imitations." That is only reference to future regulations issued by the two governments. Ministerialdirektor Schlotterer stated (transcr. page 5858) that such a regulation was being considered in the peace-treaty. There is however no evidence that Mann has directly demanded any retributions for damages from Rhone-Poulenc.

(See Mann's testimony, transcript E.p. 10407, 10424, 10405).

Furthermore, Mann states in his suggestion to Rhone-Poulenc that "in future patent protection for certain processes will be introduced in France for pharmaceutical products, in a manner analogous to the German and international example" which in future would make it impossible for Rhone-Poulenc to continue their usual procedure of imitating a large number of original products."

(Mann Exh. 303, M.Doc. 365, DR, IV, p. 59)

In the course of the precedent meeting of 29 September 1940, the representative of the Reich Ministry of Economics, Ministerialdirigent Mulert actually stated "that this problem will be solved by the fact that the French will demand an assimilation of their patent law to the patent law of the other countries and that then the danger for the German industry will be eliminated"

(Pres. Exh. 2094, Doc. MI 9265, p. 3)

On 4 November 1940, after this meeting in the Reich Ministry for Economics, the I.G. Farben Bayer submitted to the Reich Ministry of Justice a memorandum concerning the patentability of Pharmaceutical compositions and drugs in France.

(Proc. Exh. 1267, Doc. NI 7654, DB. 59, E.p. 31 seq, G.p. 40seq).

As it can be seen from a later reply from the Reich Ministry of Justice of 26 March 1941

(Mann Exh. 184, M.Doc. 559, DB. IV, p. 19)

the Foreign Office did not take up this matter with the Armistice Delegation or the French government. It was, however, suggested to the I.G. Farben to get in direct touch with the French competitors. Indeed Mann's foresight has proved to be correct. The pharmaceutical patent protection has been introduced by a French Law on the own initiative of the French industry and without any German doings.

(Mann Exh. 191, M.Doc. 576, DB. IV, S.32).

Favorable acceptance of Mann's suggestions concerning a private economic agreement by Rhone-Poulenc.

6. According to Faure Beaulieu's current reports, Mann's suggestions (Mann Exh. 203, M.Doc. 355)

concerning private economic negotiations with Rhone-Poulenc "aiming at the sounding of possibilities for an understanding"

(Mann Exh. 203, DB IV, page 58)

went on "satisfactorily".

(Mann Exh. 218, M.Doc. 397, DB. IV, page 97).

On 8 October 1940 the Paris branch reported the following to Mann: "The officials showed complete understanding for your suggestions, seemed to be convinced themselves of the necessity of coming to an agreement with Bayer".

(Mann Exh. 204, M.Doc. 359, DB. IV, page 62).

On 19 October 1940 Bayer's Paris branch gave the following report on another discussion with Rhone-Poulenc's President Albert Buisson: "After acknowledging our preliminary conditions, Mr. Buisson showed himself entirely willing to come to an agreement for the purpose of a subsequent collaboration" and "the general impression continues to be that the officials of Rhone-Poulenc actually propose to conclude a friendly agreement with us on the subject of any future collaboration".

(Mann Exh. 205, M.Doc. 362, DB. IV, page 63).

A letter to Mann, dated 15 November 1940 and reporting on another meeting with the President Buisson, the Managing Director Grillet and the technical managers Bè and Barral, stated that "the conference was conducted in a perfectly friendly manner".

(Mann Exh. 206, M.Doc. 363, DB. IV, page 64).

A report of 19 November 1940 on Faure Beaulieu's discussions with Rhone-Poulenc which was enclosed to a letter of the Paris branch to Mann of 20 November 1940,

(Mann Exh. 207, M.Doc. 364, DB. IV, page 70), stated that the executives of Rhone-Poulenc agreed on principle to the project of an understanding "and that the conversation had the purpose "to study the possibilities of applying the suggestions of Rhone-Poulenc". It was one of Rhone-Poulenc's suggestions that "arrangements would have to be made for an agreement concerning the new products". This suggestion of Rhone-Poulenc was in fact identical with Mann's suggestion in his note of 5 October 1940.

(Mann Exh. 203, DB. IV, page 61)

and was realized by the license agreement II,

(Pros. Exh. 1275, DB. 60, page 7).

7. HAHN negotiated himself with the executives of Rhone-Poulenc for the first time on 29 November 1940, hence more than seven weeks after the first conference between Faure BEAULIEU with Rhone-Poulenc, and subsequent to the basic agreement to the plan of collaboration which was stated in the meantime, and without any influence being exerted in the interim by the authorities upon the negotiations, and without any direct or indirect pressure by the authorities upon Rhone-Poulenc through production restrictions or other curtailments on personal liberty and property - although the prosecution did not present a single document pertaining to this aspect.

After preliminary discussions and a joint breakfast, the negotiations were carried on with President BUISSON in the office of Rhone-Poulenc

(HAHN Exh.207, M.Dec.364, DB.IV, P.68;

HAHN testimony, English Transc.P. 10418, German P.10553);

(Prosec.Exh.1269, Doc.NI 7629, DB.59, P.87).

HAHN did not negotiate as government representative; he had no orders from the government (Prosecution trial brief, paragraph 33, P.45 of original), although it is a fact that the Reich Ministry of Economics had "approved" in a previous discussion on 11 November 1940 the planned private-economic negotiations with Rhone-Poulenc and had informed the authorities in Paris.

(Prosec.Exh.1268, Doc.NI 10741, DB.59, P.27).

The phrase: "Upon orders and with the consent of German authorities", which was mentioned in the transcript concerning the discussion with Rhone-Poulenc (Prosec.Exh.1260, DB.59, English P.56), and which was written by the "Prokurist" SCHMITZ more than a week later,

was not to be taken literally, in any case not as meaning an order.

(Testimony Werner SCHMITZ, English Transc.P.13734/35, German P.14032).

Rhone-Poulenc executives knew that MANN had come to the negotiations as manager of BAYER, as this was perfectly clear from the circumstances.

(Testimony MANN, English Transc.P.10420/21, German P.10555).

This paper was an internal note and was never seen by

Rhone-Poulenc. This is shown by the phrase in BAYER's

letter to Rhone-Poulenc of 18 December 1940 - before the signing

of the contract, which read as follows: "We have, as ever, the

urgent and sincere desire which is shared by the German authorities."

(MANN Exh.213, M.Dec.368, DB.IV, P.90).

8. After declining a proposal briefly mentioned at the beginning of the conference concerning mutual exchanges of investments (MANN testimony, English Transc.P.10418, German P.10554), and after the concept of a joint sales organization was rejected, Director General GRILLET proposed himself as a new basis for negotiations the payment of a license for those products in which I.G.Farben-BAYER "possessed priorities recognized by Rhone-Poulenc".

(Prosec.Exh.1269, DB.59, English P.86, German P.89).

GRILLET himself presented the original lists of the preparations concerned.

(MANN Exh.210, M.Dec.628, DB.IV, P.78).

This list coincides almost literally with BAYER's own list.

(MANN Exh.209, M.Dec.372, DB.IV, P.75).

There was no discrepancy regarding the list of preparations initiated by Rhone-Poulenc.

(MANN testimony, English Transc.P.10422, German Page 10556 ;

Prosec. Exh. 1265, DB. 59, English P. 56, German P. 89).

Contrary to the prosecution's statement (trial brief P. 48 of original), Rhone-Poulenc did not make this offer to pay license fees because of any pressure or any threats by MANN. On 18 December 1940 MANN wrote to Rhone-Poulenc as well as to the Reich Ministry of Economics that he himself recognized as well-founded the reasons against a joint sales company advanced by the Rhone-Poulenc executives.

(MANN Exh. 213, H. Dec. 368, DB. IV, P. 30,

" " 326, " " 371, " IV Suppl., P. 1).

This letter to the Reich Ministry of Economics contains MANN's own report about the negotiations of 29 and 30 November 1940 with Rhone-Poulenc. It states: "We abandoned the project in the course of the negotiations with the French partner;" and "the Rhone-Poulenc executives recognize, however, that they have been guilty of a moral violation of our rights and they showed themselves ready....".

That Rhone-Poulenc was not under any pressure or under the impression of being intimidated is especially shown by Rhone-Poulenc's wish expressed during the negotiations for extending collaboration also to other branches, including those outside the pharmaceutical field, as has been expressly referred to in a letter of 17 February 1941 by Rhone-Poulenc to MANN.

(MANN Exh. 226, H. Dec. 668, DB. V, P. 13).

Additional Discussions and Correspondence until the
Acceptance of License Agreement I, on 25 February 1941.
No Pressure Exerted.

- D. MANN did not attend the subsequent discussions at which the various points of the License Agreement were negotiated. Both contract partners presented their differences of opinion, and

Rhone-Poulenc showed in an explicative note (signed by BO on 4 December 1940) their views and wishes as well as their agreement with points which were to be included into the agreement. (HANN Exh.212, M.Dec. 627, DB.IV, P.81).

BAYER I.G.Farben finally consented to the text as drafted by Rhone-Poulenc, as shown by paragraph 2 of HANN's letter to Rhone-Poulenc of 18 December 1940.

(HANN Exh.213, M.Dec. 368, DB.IV, P.88).

After an exchange of correspondence concerning various clauses to the agreement, BAYER agreed in a letter dated 9 January 1941 to the additional changes of Articles 1, 6 and 7, as proposed by Rhone-Poulenc.

(Prosec.Exh.1273, Doc.NI 10377, DB.60, P.1).

On the other hand, Rhone-Poulenc confirmed in a letter of 18 January 1940 with BAYER's desire for deleting the words: "in agreement with the German authorities".

(Prosec.Exh.1274, Doc.NI 7647, DB.60, P.3).

Rhone-Poulenc wanted on 18 January 1941 - for the sake of reciprocity - the inclusion of the sole reference to the French government in this agreement.

(HANN Exh.333, M.Dec.460, DB.IV Suppl., P.17.

" " 226, " " 668, " V, P.14).

BAYER replied on 7 February 1941: "We shall automatically take care of your wish in a friendly spirit".

(HANN Exh.225, M.Dec.585, DB.V, P.12).

In consequence of the subsequent discussions on 25 February 1941 in Leverkusen concerning this agreement, the principle of reciprocity was finally written into Section 3 of the agreement.

(HANN Exh.227, M.Dec.398, DB.V, P.19).

No pressure of any kind was exerted upon Rhone-Poulenc during the long period of negotiations which preceded acceptance of the license agreement during the discussion on 25 February 1941 in Leverkusen.

(MANN Exh.227, K.Dec.398, DB.V, P.19)

Rhone-Poulenc made no attempts of refusing to sign the agreement, nor did it request any other changes than those approved by BAYER. No document was presented in evidence showing that Rhone-Poulenc tried to induce the French government to refuse the necessary approval of the agreement, although the main pharmaceutical works were located in the unoccupied French territory. Neither did the prosecution produce a particle of proof that BAYER or German government agencies had taken any steps to induce the French government - which at that time at least was sovereign - to approve the agreement.

The Invalidity of the Old Agreements and Rhone-Poulenc's Protest in a Letter of 18 January 1941.

10. The only objection by Rhone-Poulenc - specially emphasized by the prosecution in the Brial Brief, page 49, at the end of the original - is directed against the deletion of the words: "in agreement with the German authorities" in the third paragraph of the agreement concerning the return of the trademark "Aspirin", and the interruption of prewar contracts.

(Prosec. Exh. 1274, Dec. NI 7647, DB. 60, P. 2/3, in connection with

" " 1273, " NI 10327, " 60, " 1 and

" " 1271, " NI 6944, " 60, English P. 70).

I.G. Farben BAYER stated on 9 January 1941 in a letter to Rhone-Poulenc: "This deletion does not change the basic determination that the old agreements have become invalid" (Prosec. Exh. 1273).

The prewar contracts were invalid in the opinion of the Armistice Commission in Wiesbaden and the Economic Department in Paris, and that is why it was originally inserted in the agreement upon the request of the Military Administration, as is shown by a notice dated 3 February 1941.

(MANN Exh. 275, M.Doc. 551, DB. V, P. 117).

The French Association of Chemical Industry (Union de l'Industrie Chimique) had also informed its members through a circular letter that international agreements were invalidated on account of the war.

(Dr. KUSPFER's testimony in the session of 28 January 1948, transcript, English page 5997/8; German page 6052;

MANN Exh. 277, M.Doc. 557, DB V, p.121)

Through its circular letter No. 2066/40, of 14 December 1940, the Reich Office for Foreign Trade publicised information concerning the invalidation of prewar contracts on account of the war.

(MANN Exh. 276, M.Doc. 383 - NI 8450, DB. V, p. 118)

The fact is, however, that the four prewar agreements between Rhone-Poulenc and I.G. Farben (MANN Exh. 181, M.Doc.329, DB IV, p. 7) were incorporated without changes concerning the amount of the license fees in the new agreement.

(Procco, Exh. 1271, Doc. NI 6944, DB. 59, English p.70, German P.104;

MANN Exh. 279, M.Doc. 390, DB V, p. 125 a).

Nor was the invalidating of the old agreements unilateral. For Bayer had assented to forego the payment of license fees arising from these agreements for the time from the beginning of the war (1 September 1939) until the date of effectiveness of the new agreement (1 January 1941).

(MANN Exh. 286, M.Doc. 569, DB. V, p. 134).

This alone amounted to about 2,8 million French Francs.

(Schmitz testimony, session of 5 May 1948).

In any case, Rhone-Poulenc did not take the deletion of the clause "in agreement with the German authorities" as a pretext to have "the signing of this agreement delayed on account of renewed correspondence".

(Proc. Exh. 1274, DB. 60, English page 3),

although the letter dated 9 January 1941

(Proc. Exh. 1273, DB. 60, p.1)

did not threaten any repercussions. Five days later, on 18 January 1941, and in the subsequent letter of 17 February 1941, Rhone-Poulenc developed already the basic ideas for future agreements, by referring at the same time to the negotiations of 29 November 1940, when Director General Grillet expressed the desire for increased cooperation.

(Mann Exh. 221, M.Doc. 391, DB. V, p.5,
" " 226, " " 668, " V, " 14).

11. Rhone-Poulenc stated at the outset of its letter of 17 February 1941 that the French authorities had given their consent to Agreement (I). Paragraph 3 of this letter shows how important Rhone-Poulenc deemed this consent (to wit: "as a consequence of the above consent we deem the agreement to have been in effect as of 21 January 1941.")

(Mann Exh. 226, M.Doc. 569, DB. V, page 17,
" " 215, " " 563, " IV, " 93).

The fact is that the validity of the agreement, as shown by its paragraph 13 b,

(Proc. Exh. 1271, DB. 59, English p. 72/72 a, German p. 109)

was subject "to the French authorities concerned giving their consent." The prosecution did not assert that the

French government was approached by any German agency to approve the agreement. As shown by a letter of the Reich Ministry of Justice, dated 26 March 1941, official German agencies did not even intervene concerning the question of changing the French patent laws.

(Mann Exh. 184, M.Dec. 559, DB. IV, p. 19).

The prosecution did also not present any documents that Rhone-Poulenc had at any time or in any manner protested in the course of the succeeding business relations with IG Farben Bayer against License Agreement I, and still less, that it had suggested the suspension of the agreement. At no time during these three years did Rhone-Poulenc attempt to omit or delay under any pretext the payment of license fees. On the contrary, Rhone-Poulenc always unconditionally paid in time.

License Agreement I .

12. The principal obligation of Rhone-Poulenc, according to the license agreement, was the payment of license fees for products imitated since a number of years, as enumerated in a list transmitted on 29 November 1940 by Rhone-Poulenc.

(Mann Exh. 210, M.Dec. 626, DB. IV, p.78,
" " 211, " " 373, " IV, " 80,
" " 212, " " 627, " IV, " 81).

The license fees were not stipulated for the past, but expressly for the future, as becomes manifest by figure 13 of the agreement.

(Pros.Exh. 1271).

As is shown by a comparison, the amounts of the license fees were within the scope of the prewar contracts.

(Pros.Exh. 1271 and

Mann Exh. 181, M.Dec. 329, DB. IV, p. 7 ff).

The only changes made were concerning the anti-malaria preparation "Moranyl", which was decided in favor of Bayer, and with regard to "Rhodine", decided in favor of Rhone-Poulenc.

(Mann Exh. 213, M.Doc. 527, DB. IV, p.82; 1

W. Schmitz testimony, transcript, English p. 13863/4, German p. 14096/97)

Rhone-Poulenc engaged voluntarily to pay license fees in view of the negative French legislation in the field of patent protection for pharmaceutical compositions, although, according to the opinions of prominent French jurists, the French Patent Law of 1844, when correctly interpreted, granted protection against imitation and only needed clarification.

(Mann Exh. 183, M.Doc. 331, DB. IV, p.13).

The documents:

Mann Exh. 189, M.Doc. 566, DB. IV, p. 26 and
" " 190, " " 567, " IV, " 27

also show that Rhone-Poulenc' French patent attorneys obtained already in 1941 certain improvements in protection by clarifying the 100-year-old law of 1844 through administrative rules of procedure.

Contrary to the final conclusion of the prosecution (trial brief, p. 48, of the original;

Proc.Exh. 1051; 1267; 1268),

Farben was not the moving force to obtain retroactively pharmaceutical patent protection in France before the conclusion of the final peace treaty. Mann wrote down by hand on the letter of the Reich Ministry of Justice, of 26 February 1941, the following: "Keep in abeyance until peace treaty."

(Mann Exh. 184, M.Doc. 559, p. 18).

Rhone-Poulenc itself wanted patent protection for pharmaceutical preparations.

13. Rhone-Poulenc stated already in 1927 to Bayer officials that they "advocated the creation of patent protection in the pharmaceutical field", and in 1940, after the first meeting, Rhone-Poulenc executives declared that "their company, as a reputable firm, was in favor of a request for this purpose.

(Mann Exh. 185, M.Doc. 335, DS. IV, p.21).

A letter written in 1934 shows for instance that Rhone-Poulenc voluntarily admitted the imitation of preparations, and the tender of a 10 % license fee to Bayer.

(Mann Exh. 182, M.Doc. 333, DS. IV, p. 10).

Rhone-Poulenc also stated in a note explicative, dated 4 December 1940, concerning the draft of a license agreement for the introduction of patent protection: "On our part, we shall gladly undertake those steps as we have already done in the past."

(Mann Exh. 186, M.Doc. 627, DS. IV, p.23).

Rhone-Poulenc's own interest in the enactment of patent protection becomes also evident from notes in:

Mann Exh. 187, M.Doc. 581, DS. IV, p.24.

" " 188, " " 522, " IV, " 25.

Rhone-Poulenc representatives exercised influence upon a patent commission appointed by the French industry for clarifying the patent protection of pharmaceutical products, as is shown by reports of patent attorneys and Rhone-Poulenc representatives.

(Mann Exh. 190, M.Doc. 567, DS. IV, p.27 and following.

" " 306, " " 17, " VI, " 35.

" " 185, " " 335, " IV, " 21).

Actually through the Law of the French Government of 27 January 1944
(Mann Exh. 191, M.Doc. 575, DB.IV, p.32)

the French Patent-Law of 5 July 1844 was elucidated to the effect
that the methods of the production of pharmaceutical compositions
are patentable. This law of 27 January 1944 is still in force to-
day. French Patent-Lawyers in

Mann Exh. 192, M.Doc. 598, DB. IV, p. 36 and
" " 309, " " 16, " VI, " 35

give this information: "There is, by the way, no reason why this
law of 27 January 1944 which is not a law of the present circumstan-
ces, should be changed" and "the change — (namely the elucidation
of the patentability) — is the result of numerous reclamations
which had been presented on this point by the French industry: these
reclamations were based on the inaccuracy of the jurisprudence in
the matter and especially the jurisprudence of the public law" and
"this law (of 27 January 1944) introduces improvements in the
organic Patent-Laws of France which for many years were called for
by the interested parties and which chiefly guaranteed the interests
of the French citizens."

As a consequence of the new version of the French Patent-Law,
the licences granted by Bayer to Rhone-Poulenc become now exclusively
the licences of Rhone-Poulenc in France.

(Mann Exh. 235, M.D.338, DB. V, p.37;

Mann statement, Prot. English p. 10402, German p. 10535/6.)

14. Contrary to the assertion of the Prosecution (Trial-Brief p.48 of the original with reference to Procec.Exh. 1264, 1265) the licence-fee were not a "considerable compensation for damages and interest."

The voluntary payment of licences was such rather for the profitable use and exploitation of the intellectual property of inventions which did not just happen to fall into I.G. Farben's lap, but were on the contrary the result of years' of laborious and expensive scientific effort. Among all the civilized nations of the Western world France was almost the only country which, owing to its abstruse or inefficient legislation, did not protect the intellectual property of pharmaceutical compositions.

(Mann statement, transcript English p. 10396/97, German 10529/30).

However the payment of a licence constituted at least a strong moral background for the imitations by Rhone-Poulenc.

(Mann statement, transcript English p. 10397, German p. 10530).

This is also shown in Rhone-Poulenc's own attitude as demonstrated above and by its own endeavors in the direction of introducing a protection for pharmaceutical products. Rhone-Poulenc was really "a first class serious concern" and for that reason had always taken its stand against this illegality in the matter of patent-protection.

(Mann statement, transcript English p. 10397, German 10530/31).

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Thus in 1934 already Rhone-Poulenc wrote to Bayer: "It has not escaped our notice that to a certain extent we are nevertheless profiting by the initiative whose author you (Bayer) are."

(Mann Exh. 182, M.Doc. 333, DB. IV, p.11)

The payment and the acceptance of the licence-fee during the actual three-years duration of the contract was — as the documents which have been cited show — the result of a voluntary agreement on the strong moral basis of the naturally entitled to protection of the property, fully approved of by Rhone-Poulenc itself.

15. This applies also to the word-mark Aspirin which on the basis of Article-a 297 of the Treaty of Versailles was withdrawn by the French Government and liquidated in 1928.

(Mann statement, transcript English p. 10402, German p. 10535).

Contrary to the opinion of the Prosecution (Trial-Brief p. 47 of the original) it was not Bayer's intention to deprive Rhone-Poulenc of the trade-mark Aspirin. Both parties simply proceeded from the logical standpoint that this important word-mark, in the world originally protected for Bayer alone, through the peace treaty or through an other agreement of the two nations in a sensible restoration of the legal status, would revert to Bayer. In this case it was agreed that Rhone-Poulenc alone would be licensed to use the word-mark Aspirin.

(Mann statement, transcript English p. 10402, German p. 10535/36).

To be the only one to have this licence would have meant to Rhone-Poulenc an inestimable advantage. At no time, however, was Rhone-Poulenc forbidden by Bayer to use the name Aspirin (Point 4 of the contract I, Prosec. Exh. 1271, Doc. NI 5944, English p. 70/71, German 105).

The payment of the licence fee was a compensation for Bayer's withdrawal from the "Aspirin" business in France.

Hereby should be noted that Bayer in 1938 had established even its own production of aspirin in France.

(Mann Exh. 178, M.Doc. 326, DB. IV, p.3)

As had been agreed, Bayer, after the contract was signed, at once withdrew completely from the aspirin-business in France, the colonies and the territories under mandate.

(Mann Exh. 216, M.Doc. 554, DB. IV, p.94,
" " 217, " " 555, DB. IV, " 96,
" " 332, " " 459, DB. IV, suppl., p.16).

16. Rhone-Poulenc's pharmaceutical products were under protection in German territories and according to the German Patent-Laws, I.G. Farben would be obliged to pay a licence fee to Rhone-Poulenc in case it should want to exploit any of Rhone-Poulenc's preparations in Germany. In contract I through the Agreement on licence fees for imitations and the prohibition of imitations, the parity of the contracting parties Rhone-Poulenc and I.G. Farben was first of all established.

(W. Schnitz statement, transcript English p. 13723/24, German p. 14020).

Changes in contract I, Full compensation and reciprocity.
Bayer's withdrawal from its own French business as regards
the products of contract I.

17. Contract I was changed through various agreements reached in the course of further collaboration.

(Mann statement, transcript English p. 10447/49, German 10580/83).

As far as pharmaceutical chemicals are concerned (article 1 of the contract), Bayer, as serious competitor of Rhone-Poulenc, withdrew from the French market according to the agreement of 11 November 1941.

(Mann Exh. 287, M.Doc. 570, DB. V, p. 135
" " 290, " " 572, " V, " 139).

Concerning the products of article 2 and of article 3 of the contract, Bayer also waived all claim to the French market.

(Mann Exh. 348, M.Doc. 424, DB. V, p. 68,
" " 371, " " 375, " IV, Supplement, p. 15;

Process. Exh. 1277, DB. 60, English p. 18,
" " 1282, " 60, " " 36).

According to article 4 (Aspirin) Bayer immediately discontinued the "Aspirin" business in France, the territories under mandate, protectorates and colonies.

(Mann Exh. 316/17, M.Doc. 554/5, DB. IV, p. 94/95).

The agreement on comparable prices in article 5 was - according to the supplement of 26 February 1941 - made dependent upon the "possibility to raise the prices of the Rhone-Poulenc Products Specia".

(Mann Exh. 227, M.Doc. 398, DB. V, p. 21)

Rhone-Poulenc realized "considerable profits" from such increases in prices, as is shown in the document

Prosec. Exh. 1284, VI 8978, DB 60, Engl. p. 60, German p. 64.

Owing to this agreement Bayer even had to raise some of its prices.

(Mann Exh. 307, M. Doc. 387, DB. VI, p. 34).

Article 6 of the contract has become devoid of application by reason of the reciprocity conceded by Bayer

(Mann Exh. 227, M. Doc. 398, DB. 7, page 19)

and the stipulation of mutually offering the pharmaceutical products for exclusive exploitation, at the same time waiving the claims to the market of the licence holder.

(Prosec. Exh. 1275, Doc. VI 8611, DB. 60, Engl. p. 5/8, German p. 6;

Mann Exh. 229, M. Doc. 403, DB. V, p. 24).

The duration of the contract agreed upon in article 13 concurs with the duration of Agreement II (Prosec. Exh. 1275) and the Theraplix-Contract which had been signed for an indefinite period.

(Mann Exh. 287).

For this period of 50 years Bayer in the course of further negotiations, also waived all claim to the French market.

(Compare summary in Mann statement, transcript Engl. p. 10447/8,
German p. 10582/83.)

18. To waive the claims to the French market was under the then prevailing circumstances an exceptional concession, also in consideration of the project which had already been started before the war, namely a production of its own in France.

(Testimony W. Schmitz of 6 May 1948, Engl. transcript page 13725, German transcript page 14022).

However, the development of the collaboration of the two concerns, even without the consideration of this equivalent, shows that as the result of it Rhone-Poulenc profited about three million French Francs and in any case suffered no loss. This is shown in the statement with detailed explanations in

Mann Exh. 279, Mann Doc. 390, Doc. Book V, page 125 seq. and Supplement of testimony W. Schmitz, transcript 13724/26, German page 14021/2

This counter-calculation remained unaffected in the cross-examination by the Prosecution.

(Testimony W. Schmitz, transcript 13796/809, German page 14095/14105)

The assertion of the Prosecution in the Trial Brief page 49 of the original, that the IG had received the licences "without equivalents of any kind" does not correspond with the facts as shown in the authentic documents of that time quoted in article 19. Even in the French legal proceedings of the IInd instance (Proc. Exh. 1284) were the great advantages derived by Rhone-Poulenc enumerated.

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Mann's offer concerning the new products on principle agreed upon already before contract I was signed.

19. Above all, both contracting parties were already before contract I was signed, thoroughly convinced that further agreements concerning the collaboration of the two concerns should be reached.

(Mann Exh. 237, Mann Doc. 401, Doc. Book V, page 40,
" " 238, " " 409, " " V, " 42).

Mann in his memorandum of 5 October 1940

(Mann Exh. 303, Mann Doc. 355, Doc. Book IV, page 61)

had already stated his readiness in the future to exploit the new products also in common. Rhone-Poulenc in a discussion of 19 November 1940 suggested: "Provision must be made for an agreement regarding the new products."

(Mann Exh. 207, Mann Doc. 364, Doc. Book IV, page 59)

In the course of the discussion of 29 November 1940 pertaining to the negotiations about contract I, Rhone-Poulenc (Generaldirektor Grillet) expressed the desire for the expansion of the collaboration, as has been confirmed in the letter from Rhone-Poulenc (30) of 17 February 1941.

(Mann Exh. 236, Mann Doc. 668, Doc. Book IV, page 17).

Before the signing of contract I, Mann offered the new products which Bayer would bring out in the future to Rhone-Poulenc for production and distribution against payment of a licence fee.

(Mann Exh. 213, Mann Doc. 366, Doc. Book IV, page 89).

The mutual interest in further collaboration is also expressed in a communication of 2 January 1941 from Bayer.

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in which a joint discussion at Cologne or Leverkusen had already been scheduled for 21 January 1941.

(Mann Exh. 220, Mann Doc. 574, Doc. Book V, page 3)..

In a communication from Rhone-Poulenc (President Buisson) of 13 January 1941

(Mann 221, Mann Doc. 591, Doc. Book V, page 5) and in a letter from Bayer (Mann) of 21 January 1941

(Mann Exh. 222, Mann Doc. 590, Doc. Book V, page 7)

expression is given to the mutual readiness for further collaboration and this in the direction of an agreement concerning the mutual exploitation of new products, as has also been reported by Mann in the KA (Commercial Committee) on 5 February 1941 and in the Vorstand on 8 February 1941

(Mann Exh. 223, Mann Doc. 292, Doc. Book V, page 8.
" " 224, " " 293, " " V, " 9)

Even in the communication of 18 January 1941 from Rhone-Poulenc

Pres. Exh. 1274, Doc. Book 60, page 3).

which was submitted by the Prosecution as evidence for the assertion of pressure, the hope is expressed that "the scheduled meeting" would lead to a "complete development of the relations between our concerns". Finally the preamble to Contract I

(Pres. Exh. 1271, Doc. Book 59, Engl. page 69 infra)

shows that "like IG Farben so also is Rhone-Poulenc desirous of establishing friendly relations between both groups."

Contract II.

20. Actually, contract II concerning the mutual exchange of the new products against payment of a licence fee with simultaneous withdrawal from the market of the licence-holder was already on 25/26 February 1941 agreed upon during the detailed discussion between Rhone-Poulenc and Bayer at Leverkusen, and put in writing in the correspondence of 28 March/17 April 1941.

(Proc. Exh. 1275, Doc. Book 60, Engl. page 5, German page 7;
Mann Exh. 229, Mann Doc. 403, Doc. Book V, page 24).

21. The value of this licence-offer to Rhone-Poulenc for the new products, and the cession of all the experiences of the Bayer-Laboratories may be judged from the development of the turnover of the Bayer Sales Combine

(Mann Exh. 230, Mann Doc. 404, Doc. Book V, page 25,
" " 231/32, Mann Doc. 515, 515a, Doc. Book V, page 27/28;
Testimony Mann transcript Engl. page 10345, German page 10480)

and as shown in

Mann Exh. 233, Mann Doc. 425, Doc. Book V, page 29

from the successful scientific productivity of the laboratories which in 13 years, since 1926, brought out more than 190 pharmaceutical preparations alone, a large number of which attained a world-wide reputation. In comparison with the other customary agreements of Bayer -- with the one exception of the Bayer contracts with the American Sterling Group -- contract II was "quite an unusual concession" to Rhone-Poulenc

(Mann Exh. 235, Mann Doc. 502, Doc. Book V, page 39;
Testimony Mann, transcript Engl. page 10345, German page 10480).

23. Rhone-Poulenc fully realized the importance of contract II and the planned collaboration of the two concerns. In a communication of 28 February 1941 addressed to Mann, President Buisson of Rhone-Poulenc, expressed the desire "that the work of collaboration that had been started might be continued for the benefit of the two countries."

(Mann Exh. 305, Mann Doc. 534, Doc. Book V, page 152)

Grillet and Bo expressed themselves to the Paris Military Administration as "extremely satisfied" with the negotiations, as is shown in a communication of 4 March 1941 from Sopi.

(Mann Exh. 294, Mann Doc. 556, Doc. Book V, page 144)

Remarks of Rhone-Poulenc about the full equality of rights of the contracting parties and the expression of their "great satisfaction over the good spirit of sincere agreement and the fairness of the negotiations" are further to be found in the documents

(Mann Exh. 239, Mann Doc. 400, Doc. Book V, page 44,

" " 237, " " 401, " " V, " 40,

" " 238, " " 409, " " V, " 42,

" " 304, " " 523, " " V, " 151,

" " 201, " " 337, " " IV, " 53,

" " 219, " " 347, " " IV, " 100).

Mann also was convinced that Rhone-Poulenc welcomed the contracts and that "the reception of the gentlemen in Leverkusen was interpreted in the spirit in which we meant to conduct the conversation."

(Communication from Mann of 25 March 1941 in Mann Exh. 295, Mann Doc. 597, Doc. Book V, page 145).

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after the conclusion of the agreement, which was planned from the beginning, and after the visit of the executive from Rhone-Poulenc in Leverkusen an intense activity was initiated in the field of the scientific-technical collaboration and the correspondence further shows that Rhone-Poulenc wanted to extend this collaboration, analogous to the Pharms Contract II, even to other fields, as for instance, plastics, Buna, etc., which suggestions were supported by Mann.

(Mann Exh. 280, M.Doc. 588, Doc. book V, p. 126.
 " " 281, " " 560, " " V, p. 127,
 " " 283, " " 565, " " V, p. 130,
 " " 284, " " 581, " " V, p. 131,
 " " 285, " " 572, " " V, p. 132,
 " " 257, " " 530, " " V, p. 86;

Testimony of Prokurist Schmitz, transcript Engl. p. 13723,
 German p. 14015/20.

Besides the American partner, Rhone-Poulenc was the only contract partner of Bayer for whom the doors of the laboratories were wide open and Rhone-Poulenc made liberal use of the granted right to have access to the experience, the scientific knowledge and the equipment of the I.G.

There were frequent discussions between the Rhone-Poulenc executives and Bayer concerning scientific and technical problems. During the brief duration of the collaboration Rhone-Poulenc selected from the 10 offered new products above all Dolantin (Morphia substitute)
 Campolon (Liver substitute)
 Postonal (substitute for an ointment basis)
 which were particularly highly valued items

of supply for the French population. Rhone-Poulenc has particularly acknowledged its indebtedness for this help.

23. The substance of Contract II.

(Proc. Exh. 1275;

Mann Exh. 229)

itself reveals a thoughtful supplementation of Contract I

(Proc. Exh. 1271)

particularly in regard to the length of time the contracts were to run and in regard to Bayer's obligations— in connection with the prohibition to imitate Bayer's products irrespective of patent protection—to offer Rhone-Poulenc in the future any and all new products as soon as they are ready to be put on the market in order to safeguard priority and, in case Rhone-Poulenc accepts the preparations to leave the sale of these products in the French zone of interest entirely to them. The close hook-up of Contract I and II may also be seen from the first sub-paragraphs of Mann's letter to Rhone-Poulenc, dated 3/3/1940 (Mann Exh. 340, M. Doc. 410, Doc. Book V, page 46/47),

in which Mann — as a natural consequence of Contract I and II — proposed for the sake of their mutual interest to set up a joint exploitation company on a parity basis.

As was the case in the proceedings before the French court (Proc. Exhibit 1284)

this important Contract I was also disregarded at the introduction of evidence by the Prosecution. The Prosecution only mentioned when they introduced Proc. Exh. 1275

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in the session of 27 October 1947

(Transcript Engl. p. 2824/25, German page 2837)

that this document was evidence of another contract in regard to the collaboration and "that it was only introduced to make subsequent references to it comprehensible."

Contract III (Theraplix-Contract)

- 24) After Contracts I and II were signed, Bayer still had a rest assortment of 62 items left to do business with in France.

Mann Exh.251 Doc.427, Book V, page 74.

In a letter to Rhone-Poulenc of 4/3/1941 Mann now offered Bayer's "complete withdrawal from the French market". Such "a far-reaching concession" was to be made dependent on their receiving an interest in the "pharmaceutical part" of Rhone-Poulenc, perhaps by affiliating with the Rhone-Pulenc sales company Specia. Mann only ask Rhone-Poulenc to look into the matter and to submit suggestions after this question has been settled. (paragraph 3,6 and 7 of the letter of 4 March 1941)

Mann Exh.240, Doc.410, book V, page 47/48

It may be seen from Mann's letter to Rhone-Poulenc of 16 December 1940 that a simultaneous exchange against I.G. shares was being considered.

Mann Exh.213, Doc.368, book IV, p.90.

Rhone-Poulenc affirms their interest in their reply of 10 March 1941.

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Mann Exh.330, Doc.453, book IV/V, Supplement page 13

Already in the discussions held in Paris on 29 April 1941 Rhone-Poulenc (Grillet, Bo, Barral) selected a large number of the more important products of the Bayer assortment to be included in the licence agreement.

Mann Exh.241, Doc.563, book V, page 49.

25. In the subsequent negotiations of 23 May 1941 with Rhone-Poulenc (Grillet, Bo, Barral)

Pres. Exh.1275, BL-7635, book 60, Engl. page 7, German page 10

the Bayer delegate Schmitz pointed out that "such a far-reaching surrender" as represented by the abstention to sell their products in France calls for more than a mere settlement on a licence basis. Rhone-Poulenc, however, did not consider "the time really ripe yet for an economic interdependence" (mutual exchange of shares) and "the impression now prevailed that the opposition against this plan did not come so much from the antipathy of the gentlemen themselves". In the face of this opposing attitude "the participation question was no longer being pressed". In the subsequent negotiations on the matter which was already discussed in Leverkusen, namely concerning the setting up of a sales corporation (51% Bayer; 49% Rhone-Poulenc) "for the so-called rest assortment sold heretofore by Bayer in France" and

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concerning the part to be brought in by Rhone-Poulenc the gentlemen showed an absolutely positive attitude in the discussions on the plan" and on their own initiative made several suggestions during the discussions toward the solution of individual problems". The Rhone-Poulenc executives acknowledged that Bayer "for the present was playing the role of a donor in this company". They also took special recognition of "our (Bayer's) weighty decision to surrender the Bayer business in France". They declared "their agreement with the setting up of the company in the form desired by us (Bayer)". "After a basic agreement had been reached on the fundamental question concerning the participation" the individual questions were then thoroughly discussed and "at the close of the meeting Mr. Buisson, the President of the firm of Rhone-Poulenc, appeared and after he had been briefly informed on the course of the discussion, declared his agreement with the resolutions". Quoted from

Proc. "xb.1276, HL-7535, dok.60, English p.10,11,13
German p.11,13,15

In the face of these facts the remark of the author of the transcript that the French considered this firm the "lesser evil, so to speak", could not have had the meaning given to it by the Prosecution in the trial brief under line 35 (page 50 of the original). Rhone-Poulenc intended to bring about Bayer's complete withdrawal from the French market by means of the cheaper course of entering into a license agreement. It was for them indeed the lesser evil

to sell Bayer's rest assortment jointly with Bayer, compared to the greater evil of Bayer remaining in the French market. In view of the importance of Bayer's withdrawal from the French market they were not disinclined to agree to a mutual exchange of shares, however, they did not yet consider the time ripe for such project. The expression "lesser evil" therefore cannot be considered under these circumstances to mean an enforced indulgence on the part of Rhone-Poulenc, since Rhone-Poulenc was not expected to make any real sacrifices" in this connection, which concluding sentence was disregarded by the Prosecution in their trial Brief. On the other hand Bayer could also consider the sales company the "lesser evil" as compared to the greater evil of having to give up the French market only against royalty payments. Moreover, the Pros. Exhibit does not show that this expression really comes from the French. Brack, who was present at the negotiations, stated that by carefully recalling to his mind the then negotiations he seems to be justified in saying "with certainty" that the French gentlemen did not use this or a similar expression."

Mann Exh.303, Doc.419, book V, page 158.

The same is true of this expression in regard to

Pros. Exh.1272, HI-7545, book ⁵⁹ / Engl. page 74/75
 Germ. page 112

Also in this case an unproved opinion of the French Government in regard to Contract I is simply being stated which, coming from Rhone-Poulenc, was passed on via M. Ba to Dr. Kolb (Military Administration), from there

to the Bayer agent in Paris and by him to Bayer in Leverkusen.

26. Rhone-Poulenc actually pressed the execution of the plan of a joint sales company with energy. As may be seen from the transcript on these discussions in Leverkusen of 3/7/1941

Proc. Exh. 1277, WI-7640, book 60, English p.17, German p.18, Rhone-Poulenc (Bo) again expressed their recognition of the "far-reaching significance" of Bayer's statement in which Bayer declared their abstention from actively operating on the French market.

In these negotiations the essential questions were frankly discussed and Bayer generally accepted the suggestions of Rhone-Poulenc, particularly the principle proposed by H. Grillet concerning the purchase price of the preparations to be taken over by the company. Furthermore, the transcript

Proc. Exh. 1277, supra
and a letter of Faure-Besaulieu of 17/6/1941

Mann Exh. 244, Doc. 522, book V, page 53, show that Rhone-Poulenc itself had suggested the Theraplix as a joint sales company, to which proposal Mann declared his agreement. (Letter of 10/10/1941)

Mann Exh. 243, Doc. 503, book V, page 55.

As to the particular modality to be followed in setting up the company and concerning the transfer of the shares it was agreed to have M. Bo of Rhone-Poulenc and M. Faure-Besaulieu

draw up a memorandum (Pros. Exh. 1277, *supra*).

Actually, Rhone-Poulenc itself decided upon the setting-up of a joint sales company, without having been subject to any pressure on the part of Payer or to any measures on the part of German governmental agencies. Thus, Rhone-Poulenc (Grillet) in their letter of 20/10/1941 submitted exact proposals concerning the tasks of this sales company, explained the special qualifications of the Theraplix for this purpose and on hand of a chart showed the most favorable manner of carrying out the transactions concerning the joint acquisition and the capital increase and also the contracts to be concluded.

Mann Exh. 247, Doc. 416, book V, p. 58/55.

Contrary to the contention of the Prosecution the Theraplix was not a subsidiary of Rhone-Poulenc.

Mann Exh. 187, Doc. 561, book V, p. 34
" " 217, " 416, " V, p. 63
" " 216, " 422, " V, p. 56

In the discussion of 11/11/1941

Mann Exh. 248, Doc. 424, book V, p. 76/80

the proposals of Rhone-Poulenc were accepted by Mann and the conditions were freely determined under which the jointly owned Theraplix company was to operate. The transcript on the negotiations

Mann Exh. 248, *supra*

also shows that the management of the Theraplix was left to President M. Vailland, who was French

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and whom Rhone-Poulenc had nominated as Verwaltungsrat member.

The French Government declared that it agreed "on principle with the proposed transaction" and only reserved to itself the right "to approve its execution", as may be seen from the letter of the Sapi, Paris, of 20 January 1942 with the attached notice of M. Faure Beaulieu concerning finance operations.

Mann Exh. 249, Doc. 568, book V, page 71.

- 27 The Thoraplix contract was finally signed on 18 February 1942

Proc. Exh. 1282, WL-8370, book 60, English page 8, German p. 41

and on 8 July 1942 the French Finance Ministry approved the acquisition of the Thoraplix shares within the framework of the German-French clearing agreement. Mann had nothing to do with the actual payments. This was made pursuant to the duly applied for foreign exchange permit.

Mann Exh. 258/81, Doc. 132, book V, p. 89

" " 259 " 610, " V, p. 91

" " 260 " 483, " V, p. 93

" " 261 " 610, " V, p. 93

Proc. Exh. 1282, WL-8370, book 60, English p. 37, German p. 40.

Bayer did not press for the approval of the French authorities. In the conference with Rhone-Poulenc (Do), held in Leverkusen on 19 March 1942, laid down in a letter of the Sapi of 25 March 1942

Mann Exh. 329, Doc. 456, Supplement book IV, V, page 9

Bayer fully appreciated the reasons for the delay of the approval and even agreed

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that Rhone-Poulenc could go ahead and subscribe for their shares in the meantime and to increase the capital stock for their part. This conference with M. Bo also disclosed that Bayer even considered that this application might be disapproved and that they were genuinely surprised to learn of the subsequent steps of Rhone-Poulenc (Grillet-Bo) to induce the French Government to approve the Theraplix contract.

28. The participation of M. Faure Beaulieu.

Already when he was first interrogated on 28 March 1947 Mann had stated in connection with this point: "I do not remember the details by heart, they may be found in the records".
Proc. Exh. 2095, HL-14495, page 12.

These records reveal the following:

In the negotiations of 23/24 May 1941 an agreement was drawn up between Rhone-Poulenc and Bayer with the approval of President Buisson to the effect that Rhone-Poulenc was to have 49% and Bayer 51% of the capital stock.

Proc. Exh. 1276, HL-7635, book 60, Englisch p.10 and 13
German p.11 and 15.

According to the subsequent discussions between Rhone-Poulenc and Bayer, held in Leverkusen on 3 July, M. Faure Beaulieu was to receive 2% of the capital stock

Proc. Exh. 1277, HL-7640, book 60, Englisch page 17,
German page 18.

At this discussion Mann declared in the presence of the Rhone-Poulenc executives: "M. Faure Beaulieu will be voting with us", as may be seen from M. Faure-Beaulieu's letter to Mann of 15 July 1941.

Mann Exh. 256, Doc. 601, book V, page 102

and Mann's letter to M. Faure Beaulieu of 23 July 1941.

Mann Exh. 267, Doc. 602, book V, page 104.

Rhone-Poulenc's knowledge that M. Faure Beaulieu's 3% was considered Bayer's own share was also shown by the conference with Rhone-Poulenc (Bâ) held on 19 March 1942.

Mann Exh. 329, Doc. 466, supplementary volume IV, V, p. 9.

At that time Bayer gave its consent to the 3% to be taken over prematurely with the proviso that Rhone-Poulenc would assume the obligation to buy back this 3% share should the Theraplix agreement not be approved by the French Government.

In his letter of 15 July 1941 M. Faure Beaulieu declined to become a trustee for Bayer and thus a puppet.

Mann Exh. 266, see above.

It is shown by the subsequent correspondence and the negotiations regarding this question that M. Faure Beaulieu could not be induced to take over a trusteeship for Farben on the basis of the agreement regarding the internal proportion of the participation of Rhone-Poulenc and Bayer (49:51).

Mann Exh.	267,	Doc.	602,	Book V,	p.	104
"	"	268,	"	583,	"	108
"	"	269,	"	539,	"	110
"	"	262,	"	443,	"	95
"	"	303,	"	419,	"	158.

By letter of 27 July 1942 he finally informed Bayer that he would, in accordance with a recent agreement, take over the 1000 shares of the Theraplix

in "his own name", as a "trustee";

MANN Exh. 338, Doc. 440, supplementary volume IV, V, P. 8
" " 371, " 441, Book V, P. 112.

In a subsequent letter of 5 May 1942 he informed RAYERS that "he had also sent an identical letter to Rhone-Poulenc".

MANN Exh. 372, Doc. 442, Book V, P. 114.

Thus H. Faure BEAULIEU made it clear with regard to RAYERS as well as with regard to Rhone-Poulenc that, as the holder of the 2% participation, he would exercise his functions as a "trustee" both ways and that his share could only be ceded with the consent of Rhone-Poulenc and Farben. Thus Farben and Rhone-Poulenc had practically a share of 50%. MANN let it go at this statement of H. Faure BEAULIEU although it was not in line with the former arrangement regarding the participation, " (BROCK's statement)

MANN Exh. 303, Doc. 419, Book V, P. 156,

in order not "to endanger the otherwise good relationship with the French partners" (SCHMITZ's statement)

MANN Exh. 263, Doc. 443, Book V, P. 96.

29. "In the meantime the French government had also demanded a guarantee from Rhone-Poulenc that Faure BEAULIEU must not sell his share except with the permission of Rhone-Poulenc",

Exh. MANN, Doc. 443, Book V, P. 95,

and expressed the wish "that 51% of the Theraplix shares should remain in French ownership" as shown by a file memo of 20 December 1941.

IAW Exh. 269, Doc. 539, Book V, P. 110.

On the other side the Reich Ministry of Economics which also had "to give the directives to the foreign exchange control authority" assigned a part to the foreign organization of the USRAE (AO) (Memorandum of the Zefi of 9 December 1941)

IAW Exh. 270, Doc. 561, Book V, P. 111.

The AO took a part in "approving transactions abroad" (IA transcript of 14 March 1939)

IAW Exh. 306, Doc. 667, Book V, P. 30.

It strove for a "German majority". As we heard from the Zefi objections were feared because "2/3 of the capital was held by your (BAYER's) trustee of French nationality. Further "detailed information" was requested, why it was necessary to "appoint M. Faure REAULTU president of the supervisory board" as "the AO attaches importance to the fact that the management should be in the hands of Reich Germans".

IAW Exh. 270, Doc. 561, Book V, P. 111.

In view of this difficult situation BAYER's on the one side, stated towards the end of December 1941 that it was agreeable with them "if M. Faure REAULTU would formally tell Rhone-Poulenc that his shares must not be sold except with the consent of both partners, Rhone-Poulenc and BAYER's, whereas further negotiations would take place with regard to the question of the trusteeship".

IAW Exh. 268, Doc. 443, Book V, P. 95.

On the other side the Zefi Berlin set the AO at work printing out

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that 2 - were being administered "in trust" by H. Faure
BEAULIEU who "was dependent on us (AMN) with regard to
the 2 - of the shares being held." (Zofi's letter to the AO
dated 5 January 1942)

Prosec. Exh. 1278 NI-7178, Book 60, English P.28/29,
German P.29-31.

This statement of the Zofi given once on 5 January 1942 was,
because of the connection between AO - Reich Ministry for
Economics - Foreign Exchange Authority - Armistice Delegation
for Economy circulated "as a confidential communication"
without AMN doing anything further. It is found again
for example in the later report of 18 June 1942 of the
armistice delegation to the foreign office.

Prosec. Exh. 1281, NI-1933, Book 60, English P.34,
German P.36.

When on 28 November to 6 December 1941 an application was submitted
to the foreign exchange authorities to approve 49 2 plus 3 2

AMN Exh. 258 Dec. 122, Book V, P. 89

the part to be played by H. Faure BEAULIEU with regard to
his share of stock was still open.

AMN Exh. 265, Dec. 647, Book V, P. 98
(Excerpt from Prosec. Exh. 1274).

further

AMN Exh. 266, 267, 268, 282, 308 see above
Interrogation (AMN Transc., English P. 10442/43
German P. 10577/8.

Actually the position of H. Faure BEAULIEU as a trustee for
both parties was only clarified unequivocally by H. Faure BEAULIEU's
communications of 27 April and 5 May 1942

"In dealing with the German authorities, however, the first version with regard to the 3 % shares was maintained. Otherwise there would have been danger of the German authorities and especially the NS Foreign Organisation (AO) withdrawing their required consent to this agreement and also the foreign exchange license required for the transaction. For the same reason the 3 % shares of Faure BRAULIEU remained on the books of Carben as their own participation under the name of Faure BRAULIEU." (Conf, Affidavit Jos. SCHLITZ)

NAF Exh. 262, Doc. 443, Book V, P. 96/97.

80. The payment of 1 million frs. made by K. BAYERS to Faure BRAULIEU had nothing to do with the acquisition and the holding of 2 % of the stock. Faure BRAULIEU obtained this amount as a loan to run until 6 months after the termination of his functions as an administrator of the Theraplix. As shown by NAF's letter of 7 May 1942 the advance was "granted without interest as a token of appreciation for your kind participation in the negotiations."

NAF Exh. 273, Doc. 445, Book V, P. 115.

In a letter of 28 July 1942 M. Faure BRAULIEU expressed his agreement with these arrangements.

NAF Exh. 274, Doc. 446, Book V, P. 116.

Already on 7 May 1942 it was an established fact that Faure BRAULIEU would receive 2 % of the stock as an independent stock holder, but as the trusted agent of Carben and Parnu-Foulenc.

NAF Exh. 271, Doc. 441, Book V, P. 113
" " 272, " 442, " V, " 114.

As shown by the correspondence

WANE Exh. 273, Doc. 445, Book V, P. 115
 " " 274, " 446, " V, " 116

no condition regarding his activity and the exercise of his voting right in favor of Farban was attached to the loan of frs. 1 million. It is true that in December 1941 the foreign exchange license for the transfer of this frs. 1 million had originally been applied for and granted under the aspect prevailing then that Faure BEAULIEU was to hold, as agreed, the 2 % of the stock for BAYER. "On account of the foreign exchange license granted already" the amount was made available later on regardless of the fact that Faure BEAULIEU's position had, in the meantime, been clarified in another way (Affidavit Josef SCHLITZ)

WANE Exh. 262, Doc. 443, Book V, P. 96.

Faure BEAULIEU was, as a matter of fact, to receive this amount independently from his holdings of shares.

Interrogation WANE Transc., English Page 10464,
 German Page 10578/9.

In addition to the final agreement mentioned above

WANE Exh. 271, 272, 273, 274, see above

"there were no other written or oral agreements with Faure BEAULIEU regarding the 2 % of the Theraplin stock (Affidavit Josef SCHLITZ)

WANE Exh. 262, Doc. 443, Book V, P. 96.

The prosecution did not state that Faure BEAULIEU in his capacity as partner of the Theraplin exercised his voting right for BAYER. Faure BEAULIEU rather,

by reason of his shares in the Theraplix, delegated Prof. DELEPIERRE into the Verwaltungsrat of the Theraplix. DELEPIERRE became president of the Specia later on.

CAUSE Exh. 263, Doc. 443, Book V, P. 37.

31. The appointments of the administrative organs of the Theraplix were not conducive to securing a majority of a dominant influence for Farbon. In the conference of 11 November 1940 already

CAUSE Exh. 248, Doc. 424, Book V, P. 67

Mr. VAILLANT "the member of the Verwaltungsrat appointed by Rhone-Poulenc" was confirmed as the president of the Verwaltungsrat and general director of the Theraplix; VAILLANT had formerly already been general director of the Theraplix; he was the son in law of A. BOISSON, president of Rhone-Poulenc

CAUSE Exh. 247, Doc. 416, Book V, P. 61
" " 302, " 413, " V, " 89

and the law regarding stock companies of 16 November 1940

CAUSE Exh. 268, Doc. 461, Book V, P. 100.

Of the 8 members of the Verwaltungsrat only three members had been appointed by BATELs. They were Frenchmen

Prococ. Exh. 1282, MI-8370, Book 60, P. 42.

Only in the conseil consultatif, a control and supervisory organ with advisory functions a German, namely BROCK, was represented. The entire personnel of the Theraplix consisted of Frenchmen

CAUSE Exh. 250, Doc. 425, Book V, P. 73
" " 303, " 419, " V, P. 93.

32. "BAYERs never claimed more rights with regard to the management and influence than they were entitled to according to the terms of the contracts" (Affidavit BROCK)

MANN Exh. 303, Doc. 419, Book V, P. 160.

In spite of the fact that the 60 BAYER products constituted a valuable contribution to the Theraplix assortment

Prosec. Exh. 1282, NI-8370, Book 50, English P.37 seq.
German P. 42

MANN Exh. 251, Doc. 427, Book V, P. 74,

MANN did not exploit the Theraplix. On MANN's suggestion it had been arranged that the amount of the yearly dividend to be taken out should not exceed 6 %

MANN Exh. 248, Doc. 424, Book V, P. 70.

Even this permissible rate was never claimed. In the business year 1942/43 in which the first and only accounting of profit took place a dividend of 4,2 % was distributed plus 30 % tax although the first profit made was higher by far as shown by the statement on turn over and the development of profit in

MANN Exh. 256, Doc. 437, Book V, P. 83.

From this statement in connection with the commentary and the settlement of accounts in

MANN Exh. 279, Doc. 390, Book V, P. 125 seq.

It is also evident how big the advantages were derived without out of the participation in the Theraplix any approximative equivalent by Rhone-Poulenc/. Just as in the case of Rhone-Poulenc BAYERs divested themselves of all their scientific know - how regarding preparations brought into the Theraplix in the case of the latter, a company, 51 % of which was being held by Frenchmen and whose general director was Mr. VAILLANT.

The Theraplix thus received all the methods and testing results for the 62 different BAYER products and "all those methods were in line with our (BAYERs') most recent experiences"

HANN Exh. 251, Dec. 437, Book V, P. 74.

In addition BAYERs let Rhono-Poulenc, upon their request have large quantities of Sulfenamid, thus exerting considerable influence upon the development of the turnover.

HANN Exh. 255, Dec. 437, Book V, P. 82.

There were also various other acts of support benefiting the Theraplix and of particular importance at that very time, e.g. the prevention of the draft of French labor for German industry.

Exh. 252, Dec. 436, Book V, P. 77
 " 253, " 439, " V, " 79
 " 254, " 438, " V, " 80.

"Contrary to the original arrangement BAYERs did not insist upon the appearance of the BAYER cross on BAYER preparations taken over and packaged and sold by the Theraplix. This decision was of particular importance in view of the fact that the meaning of the BAYER cross as the symbol of the BAYER drugs was known all over the world"

Exh. 252, Dec. 436, Book V, P. 77.

Actually there were never "frictions and difficulties" during the fulfilment of contracts and especially during the collaboration within the Theraplix.

"Neither were there any complaints by the Rhone Poulenc about the management of the Theranlix . As Brock(member of the Conseil Consultatif) stated in Mann Exh. 303, Doc. 419, Book V, p. 160 President Vaillant often expressed his satisfaction with the development of business.

33. Advantages derived from the collaboration with Bayers by Rhone Poulenc.

With regard to the entire body of the contract and the joint collaboration Bayers did everything to fulfil accurately all contractual obligations and all wishes of Rhone Poulenc as shown by some examples. Thus after the sanction of the contract I Bayers withdrew immediately from the Aspirin sale in France as equivalent for the license fee paid for the use of the "Aspirin" brand.

Mann Exh. 216, Doc. 554, Book IV, p. 94
 " " 217, " 555, " IV, " 95
 " " 332, " 459, " supplement, p. 58.

After the conclusion of contract III Bayers even withdrew completely all pharmaceutical articles and fine chemicals from the French sphere of interests .

Mann Exh. 331, Doc. 375, supplement-volume IV and V, p. 15
 " " 290, " 572, Book V, p. 138.

Upon their wish expressed outside the sphere of contract II extensive help was given Rhone Poulenc in order to enable them to start quickly a dolantin and pyramidon production of their own which, as related by Mr. Bo later on, started operations under auspicious circumstances..

Mann Exh. 281, Doc. 550, Book V, p. 127
 " " 272, " 578, " V, " 142.

In addition extensive support was granted to Rhone-Poulenc with regard to patent disputes in Holland and with another German firm.

Mann Exh. 288, Doc. 603, Book V, p. 136
 " " 289, " 620, " V, " 137
 " " 291, " 625, " V, " 139.

Mann also saw to it that Rhone-Poulenc should, in accordance with their wishes, obtain licenses in other fields for important products of Farben.

Mann Exh. 285, Doc. 679, Book V, p. 132
 " " 284, " 681, " V, " 131
 " " 300, " 406, " V, " 153.

34. Rhone-Poulenc's own testimony regarding the good collaboration with Bayers and Mann.

Bayers' loyal attitude and the value of the collaboration based on the agreements was repeatedly recognized by Rhone-Poulenc in writing as well as by word of mouth. Thus, following the conference in Leverkusen of 26 November 1941, Messrs. Grillet and Bo/as shown by a memo of 4 March 1941, "very highly" the negotiations in the presence of Dr. Kolb of the military administration.

Mann Exh. 294, Doc. 556, Book V, p. 144.

On 28 February 1941 president Duissen with regard to the Leverkusen conference expressed his wish to the effect "that the work of economic collaboration might be continued to the greatest benefit of both countries.

Mann Exh. 305, Doc. 534, Book V, p. 163.

That the gentlemen of Rhone-Poulenc (Buisson, Grillet, Bo) were satisfied with the conferences in Leverkusen of 3 July 1941 regarding the establishing of the joint distribution company is shown by Mann's reply written on 14 July 1941.

Mann Exh. 296, Doc. 591, Book V, p. 147.

In the course of their subsequent conferences with Dr. ter Meer and direktor Borgwardt in Frankfurt taking place immediately following the negotiations in Leverkusen Meers, Bo and Clouzeau desired in the field of plastics "a collaboration as adaptable as existing now in the pharmaceutical field". (Memo of 5 July 1941)

Mann Exh. 301, Doc. 509, Book V, p. 153.

"The manner in which these gentlemen referred to this collaboration made it obvious that it was in line with their wishes and that they welcomed it very much."

Mann Exh. 303, Doc. 516, Book V, p. 157.

"The common interest in the collaboration achieved is evident also from the letter of M. Grillet to Mann dated 9 January 1943 and 28 September 1943, when the entire contract was fully functioning".

Mann Exh. 298, Doc. 596, Book V, p. 150
" " 299, " 377, " V, " 153.

35. The financial result for Rhone-Poulenc of the agreement -

During the period in which the agreement I (dated 30 December 1940) was effective, the firm Rhone-Poulenc paid to the license account of the Bayer firm a grand total off ffra. 43,010,380.--. This amount, however, includes ffra. 2,000,000 which had been remitted before in the shape of the purchasing price in respect to Atabrin. The total of license fees therefore only amounts to ffra. 34,010,380.. In order to establish the fact how much more Rhone-Poulenc paid on license fees in comparison to pre-war times, the license fees, payable for products on the basis of the old agreements since 1 January 1941, have to be deducted. They amount to ffra. 2,785,640, so that the surplus amount comes to ffra. 24,224,731, which amount does not agree with the sum of ffra. 43,000,000 mentioned in the Prosecutions trial brief on page 48 of the original. This can be seen from the detailed statement in Mann Exh.347, Doc.390, Book V, page 125 which has been drawn up on the basis of the documents available in Leverkusen.

From this document however it also can be seen that the Rhone-Poulenc, from its collaboration with Bayer derived considerable profits. According to an expert estimate, Rhone-Poulenc obtained a profit of approximately ffra.3,000,000 through the co-operation with the Bayer firm. The pre-war license fees amounting to ffra.2,800,000 which were waived by Bayer according to Mann Exh.286, Document 569, Book V, page 134, were not included in this estimate.

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See also W. Schmitt's testimony of 6 May 1948

Schmitt's interrogation, transcript Engl. p. 13724/26,
German p. 14021/3
Mann Exh. 282, Doc. 504, Book V, p. 128.

With respect to the financial aid, Bayer's withdrawal from the French business which resulted in considerable advantages for Rhone-Poulenc has to be considered as well. The French administrator of the I.G. property in France has also stated this fact in a procedure before the French Civil Court (Second instance).

From Exh. 1289, book ⁸⁹ English page 54, German page 64.

36. The uniformity of the agreements.

It has been proven that Bayer withdrew completely from the French market with its own pharmaceutical business. Bayer's pharmaceutical department in Paris was liquidated. Bayer took it upon itself not to do any business on the French market, including the colonies, the mandate territories and Protectorates for 50 years. Regarding the pharmaceutical chemicals business, Bayer expressed its willingness to refrain from this business for an unlimited period. With respect to France, Bayer waived its rights concerning its trade-mark the "Bayer-Cross" which had been introduced in 75 countries. All this happened at a time, when Bayer could have set-up its business in France with great success, if Mann would have liked to profit by this situation. Instead ^{of} that, Mann made considerable concessions to Rhone-Poulenc.

That was the result of long lasting negotiations,

as it is stated in the three agreements concerning the old products, the novelties and the rest-assortments. The payment of license fees has been agreed upon for the same period for which Bayer has expressed its willingness to forego activity connected with pharmaceutical business in its own name. These license fees certainly do not represent an exorbitant equivalent of Rhone-Poulenc, especially if one considers that Rhone-Poulenc obtained the sole right to exploit the licensed products.

The entire transaction regarding Rhone-Poulenc is only to be understood as an economic entity. The three agreements can not be considered as individual contracts which have no connection with each other, but only can be considered and judged jointly. They form an uniform economic entity, just as Bayer's withdrawal from the pharmaceutical business has been established as something uniform and undivided. Each agreement represents already a supplement to the other agreement. This may be already seen from the fact that the agreements were not concluded one after the other, but that the negotiations about the subsequent agreements were already started before the precedent agreement has finally been concluded. This chronological coordination proves the uniformity of the series of agreements.

37. Short legal pointer

A war crime, as defined in the Control Council Law No. 10 is only established if atrocities or offenses against persons or property were committed, violating the laws and customs of war. This is not the case. Mann has not violated these interests protected by law by concluding these agreements and has not, in order to attain the conclusion of the agreements, injured them by threat.

The pharmaceutical production and its management were located in the unoccupied part of France. The Hague Rules on Land Warfare can therefore not be applied in this case.

Furthermore I also refer to the arguments of Dr. Siemars, Attorney-at Law concerning the question of plundering.

D. Opinions Concerning Count III:

Herr MANN is named in Count III not only in connection with his asserted general responsibility as Vorstand member, but also with the foreign labor problem, medical tests and the shipment of poison gas to Auschwitz.

1. The Lever Sales Company employed no foreign workers. MANN, consequently, had nothing at all to do with foreign labor problems. MANN did not even have anything to do with labor questions, because the sales organization which he managed employed no laborers but only clerical help. Nor did MANN visit any Farben factories except those in Leverkusen. It is also completely erroneous and twisted to connect MANN with labor questions because he once reported to the Vorstand about an address by SAUCKEL which he had accidentally heard as a member of the Reich Group Industry. It is on this topic that MANN made a report to the Vorstand, as recorded in the Vorstand minutes (Prosecution Exh. 1332, NI-8266, Book 66, English P. 46, German P. 48). This document contains nothing which in any way could connect MANN with foreign labor problems, deportations, or compulsory employment of foreign workers. The fact is that SAUCKEL did not in his report in the fall of 1942 before the Reich Group Industry touch upon the question whether and to what degree foreign workers

came voluntarily or by force to Germany. At that time SAUCKEL strongly demanded in his address that the foreign workers should get the best possible deal. This is unequivocally proved by the testimony of Director General ZANGEN, the former manager of the Reich Group Industry, and that of attorney-at-law RAUCH, the former business leader of the same Reich Group, both of whom were also present when SAUCKEL spoke.

MANN Exh. 314, Doc. 159, Book VI, P.1
 " " 315, " 108, " VI, P.3

3. The Prosecution's allegations and evidence concerning the participation in and responsibility for medical tests were already treated in detail especially by the evidence and closing briefs of the defendants Professors BOELKE and LAUTENSCHLAGER. Reference is made to this.

Additional reference is made to the statements on pages 1 and 12 of this closing brief. MANN's humane attitude and forceful support which he particularly bestowed on persecuted Jews, as well as his social conduct, make it from the start highly improbable that he would have lent his hand to any crimes against humanity. For supplementary support I refer to OSENBERG's testimony in

MANN Exh. 159, Doc. 201, Book III, P.66

"MANN's character is unblemished, he is a 'homo humanus' in the fullest sense of the word, who through this trait alone is unable to commit any ugly, brutal or mercenary act."

OSENBERG knows MANN for more than twenty years.

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HANN had in fact not the least to do with scientific tests. The scientific department in Leverkusen was subordinate to him, or the BAYER Sales Combine respectively, for organizational matters only. Consequently, Dr. MERTENS, the manager of this department, was under HANN only in commercial and scientific-advertising questions, whilst "he was responsible to Professor HOERLEIN for scientific development problems (new medicaments) and matters pertaining to Elberfeld, and to Professor LAUFESCHLAGER for matters regarding Hoechst." Unequivocal testimony concerning this was given by Dr. LUECKER, the co-worker of Dr. MERTENS.

HANN Exh. 316, Doc. 259, Book III, P.5
LUECKER interrogation, Transcript, English P.6459, German
P.613/14

Professor HOERLEIN expressly confirmed on the witness stand that the experiments which were carried out with new medicaments were not within HANN's jurisdiction. He also described Dr. MERTENS' position as that of a kind of liaison officer between the Elberfeld-Hoechst laboratories and the physicians. Dr. MERTENS carried out his scientific work to a large extent independently.

HOERLEIN interrogation, Transcript, English Page 6389/93
German Page 6445/50

The transcript of the pharmaceutical main conference gave no indication where and under what conditions experiments with the new medicaments had been carried out. Due to Dr. MERTENS' great experience and unblemished character there was no cause to doubt in any way the orderly execution of the tests according to

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the prescribed medical and ethical standards.

HOEGLER	interrogation, Transcript, English P. 6389/93, German P. 6445/50
LUECKER	" " " English P. 6450, German P. 6514

It should also be pointed out in this connection that MANN is a businessman. As such he did not have the necessary training and experience for judging medical tests. Nor was he, as manager of the Sales Combine, interested in these tests. He started to take an interest only after the finished medicaments became available as the result of these experiments. For only then did his job begin, to find out as a businessman, how and under what conditions and at which price the medicament could be merchandised.

In order to prove MANN's reported knowledge of illegal tests, the prosecution claimed that Dr. med. VETTER, who allegedly made such tests, received a specially high salary as a BAYER employee. A reexamination has now shown that BAYER considered it absolutely unimportant when hiring Dr. VETTER - or any other employee - whether he was a member of the NSDAP or any of its affiliations. Nor did Dr. VETTER receive any preferential treatment. The fixing and the regular increases of his salary were not exceptional but the rule, just as in the case of all other employees. This is shown by a comparison with the salary increases of other physicians working in the scientific department.

MANN Exh. 317, Doc. 135, Book VI, P.6/7

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Finally, the Prosecution has tried to connect HANN with typhus experiments because he had a discussion on 23 December 1941 with State Secretary CONTI, the Reich Health Leader. The documents submitted by the Prosecution

Prosec. Exh. 489, NI-1315, Book 84, English P.31, German P.45
" " 1607, " -12183, " 84, " 36, " 34
" " 1606, " -12181, " 84, " 33, " 47

do not justify the assumption that HANN had been instrumental in causing the alleged typhus experiments by visiting Dr. CONTI, or that he knew or should have known of such tests. HANN's visit to Dr. CONTI had nothing to do with tests. There was an entirely different reason, namely: The government of the Polish Government General approached the BEHRING Works to set up another typhus institute on account of an enormously spreading typhus epidemic in Poland. Director ZAHN, the manager of the Commercial Department, BEHRING Works, had misgivings about investing the necessarily large amounts and their possible loss. Herr HANN was by chance in the Bayerhaus in Berlin while the meeting regarding the setting-up of the Institute was in session. As the manager of BAYER, he was informed of this matter. HANN decided that Farben "could not but heed this urgent appeal and that financial considerations would have to step aside." He decided that he would personally visit Dr. CONTI in order to inform him of Farben's willingness to cooperate and of the efforts of the BEHRING Works, Korbach, to turn out typhus vaccines

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according to American processes.

HANN Exh. 318, Doc. 313, Book VI, P. 9-11

The witness ZAHN also confirmed in the foregoing document that HANN, after his talk with Dr. CONTI, "had not been concerned any longer with any typhus matters". There is no evidence on hand that HANN had suggested tests on prisoners. Being a businessman, "he was not familiar with this subject".

HANN Exh. 318, Doc. 313, Book VI, P. 11

The minutes of the RAYER's directors meetings of 6 January 1942 and 6 February 1942 are illuminating concerning the establishment of the Typhus Institute in Lerborg. They show that "the administration and organizational leadership was to be effected by Leverkusen", and "the technical and scientific management by Warburg".

HANN Exh. 319, Doc. 659, Book VI, P. 12
" " 320, " 660, " VI, P. 13

The Prosecution's charge that RAYER did not sufficiently supply concentration camps with medicaments is refuted by SCHAEHNHORST, the Wehrmacht's medical supply officer, who stated that the army medical depot took care of such shipments. Deliveries of Nitigal to the SS, for instance, increased from 3,500 kg in 1939 to 230,000 kg in 1943. HANN had no knowledge, however, with respect to shipments and recipients.

HANN Exh. 321, Doc. 600, Book VI, P. 14

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3. As regards the shipments of poison gas to Auschwitz, I refer to the statements which I have submitted on behalf of the entire Defense in my Closing Brief for REBERSCH. They prove that the charges levelled in this connection against all defendants are absolutely unfounded.

To Count V of the Indictment.

1. The prosecution has not proved the criminal acts constituting conspiracy. It has neither been proved that all of the defendants or a part of them had entered into a conspiracy. There is particularly no proof that Mann had participated in such a conspiracy.
2. Neither is there the slightest evidence that a specific intent was present in the case of Mann. As to his lack of knowledge concerning the war of aggression I refer to my statements on page 13 and following. Mann's whole personality, as revealed by his actions, is sufficient proof that he would have declined to consider such conspiracy, if such plans had been submitted to him in any form whatsoever.

F. General concluding remarks.

Insofar the defendant Mann has been charged with taking part in criminal acts not covered by the above examined counts of the indictment but coming within the general scope of the joint Vorstand responsibility I refer to my basic statements in regard to this question in the closing brief for ter Meer. In an enterprise of the size of the I.G. a Vorstand member cannot very well be made responsible for everything and anything which takes place in the domain of this enterprise.

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The principle of individual responsibility — which if it were otherwise would be changed to the contrary, namely an all-embracing collective responsibility — limits the criminal responsibility of each Vorstand member to such acts as come within his actual scope of responsibility and in which he participated in fact. Only in this way the principle of individual responsibility, accepted as a matter of course by every civilized law, will be safeguarded against slipping down to the level of barbarian collective responsibility of primitive jurisdiction.

The above arguments prove that Mann is not guilty of any of the crimes he is charged with in the counts of the indictment.

Nuremberg, 2 June 1948

Dr. Erich Berndt
Attorney at Law.

Trial Brief Mann

CERTIFICATE OF TRANSLATION.

We hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of the Trial Brief Mann.

Nuremberg, 18 June 1948.

Pages 1 - 8	E.M. Redelstein X 046 289
" 9 - 19	J.J. Markheim AGO D 230 019
" 20 - 36	G. Lauener ETO 20 123
" 37 - 46	J. Weismann ETO 35 270
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